Study N-100 February 4, 1994

Fifth Supplement to Memorandum 94-11

Administrative Adjudication: Exemption Request of Department of Health Services

Attached is a letter from the Department of Health Services listing 37 kinds of non-Administrative Procedure Act hearings under its jurisdiction that "have their own procedures for very good reason, such as ease of administration, need for speed, or lack of truly adversary nature." The department is concerned the proposed new APA might affect nonadjudicative and borderline proceedings as well as those that are clearly adjudicative. Also attached is the text of the statutes referred to in the department's letter.

Many hearings conducted by the department are now subject to the APA. E.g., Health & Safety Code §§ 436.57, 438.5, 438.51, 438.8, 443.37, 530, 1016, 1027, 1219, 1220, 1241, 1269, 1295, 1317.4, 1337.8, 1339.7, 1437, 1526, 1551, 1569.22, 1569.51, 1575.3, 1576.5, 1590.5, 1596.879, 1596.887, 1615, 1618, 1668, 1720, 1728.2, 1736, 25079, 25099.2, 25629, 25690, 25845, 25847, 26582, 26691, 28317, 28418, 28479, 28721. All these hearings should remain subject to the new APA.

Many, but not all, department hearings now exempt from the APA should remain exempt. Department hearings cited in its letter are discussed below in the same order as in the letter.

GOVERNMENT CODE

The department cites its investigative hearings under Government Code Sections 11180-11181. These sections permit department heads to investigate and prosecute actions in all matters under their jurisdiction, to inspect books and records, hear complaints, administer oaths, issue subpoenas, and to divulge evidence of unlawful activity to the Attorney General or any prosecuting attorney. The proposed new APA appears not to apply to the investigative part of this authority, since an APA proceeding would be required only where a "hearing or other adjudicative proceeding is required" by constitution or statute. Proposed Section 641.110.

Under Government Code Section 19175, an agency may investigate with or without a hearing the reasons for rejection of a probationary employee. Such an investigation should not be subject to the APA.

Under Government Code Sections 19230-19237, informal hearings are held to review appeals from denial of a request for access for disabled persons. These informal hearings should not be subject to the new APA.

Under Government Code Sections 19571-19589, a hearing on an adverse action against a civil service employee is held pursuant to one section of the APA — Section 11513 (evidence), but the entire APA does not apply. These hearings probably should be made subject to the new APA.

Under Government Code Section 19996.1, a resignation from state civil service may be set aside on petition for mistake, fraud, duress, or undue influence. This hearing appears to be a good candidate for application of the new APA.

The department argues that the speedy and informal *Skelly* hearings should not be subject to the new APA. In Fourth Supplement to Memorandum 94-11, the staff recommended revising proposed Section 647.110 to make clear the informal conference hearing procedure may be used for an "interim or preliminary action pending a hearing on a disciplinary action," citing *Skelly* in the Comment. This appears to be a satisfactory resolution of the *Skelly* problem.

PUBLIC CONTRACT CODE

Under Public Contract Code Section 10345, a bidder for a public contract may protest the awarding of the contract. The department must establish written procedures for deciding such protests. The statute does not require a hearing.

The Fourth Supplement to Memorandum 94-11 discusses bid protest hearings. There the staff recommended doing two things to protect the simplified procedure for bid protest hearings: (1) Make clear the APA is limited to statutorily or constitutionally required on-the-record hearings; (2) allow use of the conference hearing procedure in the routine APA case. We noted the $1,000 limitation on use of the conference hearing procedure, and recommended increasing that limit to $10,000 so as not to bog down agencies in small cases.

HEALTH AND SAFETY CODE

The department refers to the Women, Infants, and Children Program under Health and Safety Code Sections 255 and 310-319. The department is required to "provide a hearing procedure" in accordance with federal regulations for appeal of an adverse action. This should probably remain exempt from the APA to avoid conflict with federal regulations.

Under Health and Safety Code Section 530, a complaint against an environmental health specialist is investigated by the department. The department may decide to have an informal committee hearing. The committee appoints one or more hearing officers to hear the case. The informal proceeding includes the right to be heard, the right to counsel, and the right to have a record of the proceedings. After the informal hearing, the committee recommends appropriate action. If this includes a suspension or revocation of registration, an APA hearing must be held. The staff would not make the informal committee hearing subject to the APA.

Under Health and Safety Code Section 1428, a citation may be issued to a licensee of a long-term health care facility. The licensee may contest the citation, and the citation is reviewed at an informal citation review conference. The statute requires an independent unit of citation review conference hearing officers. Further review is by a civil action in municipal court. The staff would preserve the informal citation review conference, although this may be an instance where the conference hearing procedure would be useful. Perhaps further review should be by an adjudicative hearing under the APA, rather than by a court proceeding. The staff will ask the department for its view on this question.

The department refers to Cancer Advisory Council hearings under Health and Safety Code Section 1704. That section authorizes the council to hold hearings concerning compliance with the statute. It is not clear from the statute whether these hearings are legislative or adjudicative in nature, but they may be both kinds. Section 1720 provides that all "hearings authorized by this chapter" shall be conducted under the APA. Presumably this applies only to adjudicative, not legislative, fact-finding. The staff would revise the statutory reference to pick up the new APA citation.

Under Health and Safety Code Section 4027, the department determines whether domestic water quality satisfies departmental standards. (Section 4026 was repealed in 1989.) The statute does not expressly require a hearing. Thus the proposed new APA would not apply to a determination under these sections. The staff believes this is the appropriate result.

Under Health and Safety Code Section 4027.6, the department may grant a public water system a variance from drinking water standards to permit higher levels of fluoride concentration. There must be a public hearing after notice of the hearing is sent to all customers. The department must determine that there is

no substantial community opposition to the variance (an adjudicative fact) and that it does not pose an unreasonable health risk (a legislative fact). This kind of hybrid hearing, involving both adjudicative fact-finding and establishment of legislative policy, might well be exempted from the APA.

Health and Safety Code Section 25845 prescribes three types of administrative procedures relating to licenses for handling radioactive materials: (1) a non-APA hearing on request of any affected person for granting or amending a license or determining compliance with or granting exceptions to department regulations, (2) an APA hearing to suspend or revoke a license, and (3) rule-making. The question here is whether the first category of hearing should be made subject to the APA. A final order made in this first category is subject to judicial review by writ of mandate, the same as under the APA (Health & Safety Code § 25847), and noncompliance with departmental regulations may be enjoined by the superior court (*id.* § 25850). It is not obvious why this first category of hearing should be exempted from the APA, and the staff is inclined to apply the APA to it.

Health and Safety Code Section 25893 provides administrative procedures for exceeding prescribed maximums for lead and cadmium content of glazed ceramic tableware. Until the department adopts regulations establishing a hearing process, the hearing is conducted under the APA, except that hearings are conducted by a departmental hearing officer and the statute provides some special time periods. The staff would keep this scheme, but it would be more consistent with the new APA to limit departmental authority to modify APA procedures to those specified in the proposed act.

Health and Safety Code Sections 26671-26672 and 26675 provide a non-APA hearing for an applicant for premarketing review of a new drug. The department argues that because this is a "quasi-investigative function, it should be retained in its current form." However, the department concedes that hearings under Section 26672 (hearing on order refusing to approve application) "could conceivably be handled under the APA." The staff is persuaded more by the argument that the hearing determines legislative facts (e.g., long-term effects of new drug) than that it is quasi-investigative. But the speedy and informal conference hearing procedures of the proposed new APA might be well suited to these hearings. Hearings under Health and Safety Code Section 26691 (license to manufacture new drug) are already subject to the APA, and the staff would preserve this.

Health and Safety Code Section 28502 permits the department to close areas to taking shellfish unsafe or unfit for human consumption. The department may use emergency procedures effective for 30 days. For longer periods, the department must give 20 days' notice of intended action. Interested persons may submit arguments orally or in writing. Since this hearing involves legislative fact-finding, the staff would keep the present exemption from the APA.

Health and Safety Code Sections 28518.8 and 28550 provide a hearing for individual violations of the shellfish provisions. Section 28518.8 is a non-APA hearing. The section is unclear on what penalties may be imposed, but it is an individualized proceeding and for that reason should probably be subject to the new APA. Section 28550, like Section 25893 discussed above, provides an APA hearing until the department adopts regulations establishing a hearing process. The staff would keep this scheme, but it would be more consistent with the new APA to limit departmental authority to modify APA procedures to those specified in the proposed act.

Health and Safety Code Section 38060 provides an administrative appeal process for disputes under direct service contracts between a nonprofit human service agency and the Health and Welfare Agency. The hearing is conducted under procedures established by the Office of Administrative Hearings, including flexibility to accommodate the needs of a given case. The hearing appears to be clearly adjudicative in nature, and the staff is inclined to apply the new APA. The staff will ask for the view of OAH.

WELFARE AND INSTITUTIONS CODE

Welfare and Institutions Code Sections 10950-10967 provide a non-APA hearing for a dissatisfied applicant for public social services. The Department of Health Services may contract with the Department of Social Services to provide these hearings. In the Tenth Supplement to Memorandum 94-11, the staff recommended granting the exemption request of the Department of Social Services under these provisions on the ground that the programs are federally mandated and governed by federal regulations, and to require more formality on the hearing process would impose new burdens and costs. It follows that the request of the Department of Health Services for exemption from these same provisions should also be granted.

Welfare and Institutions Code Section 14087.27 provides either for judicial review of contracts between the state and hospitals for inpatient services to Medi-

Cal patients or, if the contract so provides, administrative review by an independent hearing examiner with the department making the final decision. The department says the administrative procedure must be flexible because it is a negotiated dispute resolution process. The staff is concerned these procedures may not be genuinely negotiated, but may be specified in state-drafted boilerplate. This may be a good candidate for the conference hearing procedure of the proposed new APA. The staff will try to get input from affected hospitals.

Welfare and Institutions Code Section 14105.38 provides a public hearing to receive comment on the impact of removing a drug from the Medi-Cal list of approved drugs. The department gives notice to the drug manufacturer and to organizations representing Medi-Cal beneficiaries. The hearing is by a panel of the Medi-Cal Drug Advisory Committee and the Chief of the Medi-Cal Discount Program. The panel makes a recommendation to the department. The department considers the recommendations and public comments in determining whether to delete the drug from the approved list. This hearing appears more legislative than adjudicatory. The staff would preserve the existing exemption from the APA.

Welfare and Institutions Code Section 14105.98 provides for extra allowances in Medi-Cal payments to hospitals for acute care. The hospital may use existing administrative appeal procedures for errors, omissions, or audit disallowances. No procedures are specified. The staff would not subject these appeals to the new APA.

Welfare and Institutions Code Section 14123 permits suspension of a Medi-Cal provider from the Medi-Cal program after an APA hearing. Hearings may be conducted by a departmental hearing officer, or the department may contract with OAH to do so. The department says the automatic and temporary suspension provisions should be retained to ensure conformity with federal law. The staff agrees.

Welfare and Institutions Code Section 14123.2 permits the department to assess penalties for false or illegal claims for Medi-Cal payments. The penalty is not more than three times the amount claimed. The section provides a right of appeal, but does not specify how or to whom the appeal is made. The department asks this provision not be made subject to the new APA "because of its inherent dissimilarity to typical APA-covered adjudications." This may be an instance where the conference hearing procedure would be useful. The staff

would like to see more specificity in the statute on the appeal procedure, but on balance is inclined not to require an APA hearing.

Welfare and Institutions Code Section 14126.50 requires financial audits of health care facilities under Medi-Cal. A facility "may appeal the result of any department audit" as provided in department regulations. Although the conference hearing procedure might well be applied here, the staff is inclined not to subject these appeals to the new APA.

Welfare and Institutions Code Section 14171 is also an appeal-type provision for review of tentative or final settlements based on findings of an audit or examination of a Medi-Cal provider. The department establishes the administrative appeal process. For review of a final settlement, the appeal process must include the procedural requirements of the APA. The appeal hearing is conducted by a departmental hearing officer, or the department may contract with OAH to do so. For review of a tentative settlement, the appeal hearing is informal. The process starts with an informal conference with the provider, a representative of the department, and the ALJ. The provider may litigate unresolved issues in an APA hearing, the same as for review of a final settlement. Since the provider may in any event obtain an APA hearing, the staff would preserve these provisions.

Welfare and Institutions Code Section 14300 permits a public hearing on the department's notice of intent to contract with a prepaid health plan. Any person affected may request the hearing. The department shall grant the request if it is reasonable and warrants a full public hearing. The request is deemed reasonable if there is a question regarding the plan's ability to meet its contractual obligations. This hearing appears more legislative than adjudicative in nature. The staff would continue the present exemption from the APA.

Welfare and Institutions Code Section 14450 provides two kinds of hearings. The first is a grievance procedure for persons enrolled in a prepaid health plan. The procedures are pursuant to the social welfare provisions of Sections 10950-10967, discussed above. The staff recommended those hearings be exempt from the APA, whether conducted by the Department of Social Welfare or the Department of Health Services. To be consistent, the grievance procedure under this section should also be exempt. The second kind of hearing is provided by the department, although not statutorily required, on non-renewal of a contract with a prepaid health plan. The staff would not subject these to the new APA.

The department is concerned the new APA might apply to a hearing not required by statute that is held by agreement with the appealing party or in other situations where a hearing is in the public interest. Proposed Section 641.110 appears to address this fully:

> 641.110. (a) An agency shall conduct a proceeding under this part as the process for formulating and issuing a decision for which a hearing or other adjudicative proceeding is required by the federal or state constitution or by statute.
>
> (b) Nothing in this section precludes an agency from formulating and issuing a decision by settlement, pursuant to an agreement of the parties, without conducting a proceeding under this part. . . .

We could perhaps make this clearer by revising the last sentence of the Comment as follows:

> However, by regulation an agency may require a hearing for a particular decision that is not constitutionally or statutorily required, and may, but need not, elect to have the hearing governed by this part.

Respectfully submitted,

Robert J. Murphy
Staff Counsel

STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY PETE WILSON, Governor

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August 26, 1993

Nathaniel Sterling
Executive Secretary
California Law Revision Commission
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Subject: Comments on Tentative Recommendation on Administrative Adjudication

Dear Mr. Sterling:

Attached for your consideration are comments on individual portions of the proposed new administrative adjudication procedures, which are made on behalf of the Department of Health Services.

As a matter of background to these comments, please allow me to give you a brief explanation of the experience which I am able to bring to the views expressed. I have been an attorney for the State of California for 19 years, 16 of them as a Deputy Attorney General and three as Chief Counsel to the Department of Health Services. I have personally handled and supervised dozens of administrative cases. Many of these cases (probably more than 50%) have been under the current California Administrative Procedure Act (APA). The remaining cases have been under special agency procedures, both state and federal, such as State Personnel Board, Unemployment Insurance Appeals Board, and U.S. Department of Health and Human Services grant appeal procedures.

In my current position, I supervise five (soon to be six) Administrative Law Judges who handle specialized cases, both under the APA and under program-specific statutes and regulations. (My supervision is procedural and administrative only. Since I do directly supervise the advocacy functions of my Department's legal staff, I sequester myself totally from the substance of the decision-making process.)

This background has given me both broad and deep insight into administrative adjudication procedures of various types, from the welfare "fair hearing" to the major license revocation proceeding involving a sophisticated corporate licensee represented by experienced trial counsel. In preparing these comments, I have relied both on my own background and on views expressed to me by our senior Administrative Law Judge.

In addition to the detailed comments attached, I would like to make a more general point. While I support and admire the efforts of the Law Revision Commission to unify California administrative adjudication procedure into a single system, the resulting product appears to me to have two serious shortcomings. First, the attempt to simplify all procedures by eliminating steps or distinctions which are not always applicable does not, in my opinion, always make the law more approachable for the non-expert. The opposite may well be true. In an area such as an appeal from a fiscal audit, for example, referring to the required pleadings as an "initial pleading" and "responsive pleading" would be singularly unhelpful, since it is the appellant, not the agency, which has the burden of defining the issues. Second, to have a multitude of statutes which apply unless the agency by regulation says otherwise seems to me to be potentially very confusing. For a non-expert, each such statute would have to be checked against any applicable regulatory scheme. Even if, as appears to be contemplated, all such regulations are published in a single volume of the California Code of Regulations, having so many provisions that are subject to variance by regulation (and to different variance by each affected program) would likely cause substantial confusion and uncertainty.

A further consideration is the potential expense of such a major change at a time when the state is particularly strapped financially. The contemplated changeover would have immense potential costs in the form of regulations development, notices to the public, staff training, and so forth, including as a not insignificant component the cost to agencies and the public of the inevitable errors the learning curve would cause.

You have asked that, as a part of our response, we identify those statutes under which we currently follow non-APA procedures which should be retained. Given the multitude of proceedings conducted by the Department of Health Services, this is a near-insurmountable task. We have attempted such a list, and it is appended after the comments on the proposed provisions. While we have attempted to insure its completeness, there may well be types of hearings which were missed because they are not viewed as adjudicative in nature. However, as the comments we are submitting point out, the proposed statutes may well affect such hearings along with those which are intended to be adjudicative.

Thank you for your consideration of our comments. Please feel free to contact this office for any additional assistance we might be able to provide.

Very truly yours,

Elisabeth C. Brandt
Deputy Director and
Chief Counsel

Attachments

NON-APA PROCEEDINGS IN WHICH THE DEPARTMENT OF HEALTH SERVICES HAS INVOLVEMENT

The following is a list of discrete hearing procedures utilized by the Department of Health Services. It may not be complete because of the diversity of such proceedings. Many of these proceedings have their own procedures for very good reason, such as ease of administration, need for speed, or lack of truly adversary nature.

1. Hearings under the Government Code

Section 11180-11181: Investigational hearings. These hearings, conducted infrequently, need to be tailored to the circumstances, and should not be forced into any particular format.

Section 19175: Rejections on Probation. These hearings are very limited, given the strong discretion of the agency in this area. They should not be made more formal.

Section 19233: Denial of Reasonable Accommodation. Pursuant to this section and 2 C.C.R. 547.32, informal hearings are held to review appeals from a denial of a reasonable accommodation request.

Section 19575: Notice of Adverse Action. Standard personnel matters are heard pursuant to this section and related regulations.

Section 19996.1: Setting Aside Resignation. This is another proceeding which is highly specialized and involves considerable discretion.

There are also informal hearing rights pursuant to Skelly v. SPB (1975) 15 Cal.3d 194 and Coleman v. DPA (1991) 52 Cal.3d 1102, which are granted in addition to formal hearing rights and should not be forced into a format which duplicates the formal hearing track.

2. Hearings Under the Public Contract Code

Section 10345: Bid Protests. This statute requires the agency to have written procedures, which may be specific to a particular bid process. This is appropriate given the vast variety of different processes covered.

3. Hearings under the Health and Safety Code

Section 255: California Children Services Program Disputes. These are "fair hearing" type procedures with special considerations. They should not be merged with other procedures.

Sections 311, 312: Beneficiary Appeals under the Women, Infants and Children Program (See also 22 C.C.R. §40703). These informal "fair hearings" are conducted by non-attorney hearing officials.

Section 319: Other Appeals under the Women, Infants and Children Program. This statute incorporates by reference the federal regulations applicable to such appeals and makes them applicable as a matter of state law. Note also 22 C.C.R. §40751 (food vendor appeals) and §40781 (local agency appeals).

Section 530: Environmental Health Specialist Registration. This statute provides for an investigation, an informal hearing, and a subsequent APA hearing. The informal level should not be elevated to a second APA proceeding.

Section 1428: Long Term Care Facility Citation Appeals. Care should be taken not to displace this procedure, which is carefully balanced to comply with federal law and with constitutional requirements related to civil money penalties. While the procedure provides for an APA hearing in some circumstances, it also involves several other types of review, including preliminary review at a Citation Review Conference, which is not and should not be an APA hearing.

Section 1704: Cancer Advisory Council Investigations. Subsection (e) of this provision authorizes the holding of hearings. They are investigational in nature and should not be forced into an adjudicative format.

Section 4027: Maximum Contaminant Level Exemption (Drinking Water). This statute requires a public hearing for the purpose of informing the public and allowing for public input. It should not be formalized.

Section 4027.6: Variances from Public Water Standards. Information gathering hearings under this statute are intended to determine community opposition and health risk. They should remain informal.

Section 25845: Radioactive Materials Licenses. This statute contains three different procedures, an information gathering type of hearing at which "any person whose interest may be affected" must be heard (for granting or amending a license), an APA hearing (for denying, suspending, or revoking a license), and a rulemaking hearing (for actions on regulations). These three types of hearings are appropriate to the different actions to be taken and should be preserved.

Section 25893: Tableware Civil Penalty Appeals. These special proceedings are to be conducted before a specially appointed hearing officer, and require time frames which the Office of Administrative Hearings may not be able to meet. They use APA procedures only until the Department of Health Services has promulgated specific regulatory procedures.

Section 26671: Whether a New Drug or Device Application is Approvable. This section contains a discrete procedure for

reevaluating a denial of an application for approval of a new drug or device. Since this is a quasi-investigative function, it should be retained in its current form.

Section 26672: Order Refusing to Approve New Drug or Device. While this hearing could conceivably be handled under the APA, it is still essentially a scientific investigatory function.

Section 26675: Withdrawal of New Drug or Device Approval. Similar to preceding sections.

Section 26691: Sherman Law Civil Penalty Appeals. See comment to section 25893, which is similar.

Section 28502: Closure of Waters to the Taking of Shellfish. This is an emergency procedure which is primarily of interest to members of the public, not to a particular individual. It requires public notice and the taking of public input in an appropriate manner. Since this is a public health matter on which the public has little expertise, the procedure should not be made more formal.

Section 28518.8: Violation of Shellfish Law. Since this procedure covers a variety of possible violations, affecting different kinds of individuals, entities or groups, the procedure should remain the very flexible one currently in the statute.

Section 28550: Civil Penalty Appeals - Various Entities. See comment to section 25893, which is similar.

Section 38060: Formal Direct Services Contract Appeals (See also 22 C.C.R. §20201 and §20204 for informal appeals). The statute specifically calls for flexible procedures to be used, to accommodate the particular needs of a given case.

4. Hearings under the Welfare and Institutions Code

Sections 10950-10967: Beneficiary "Fair Hearings". This is the basic welfare "fair hearing" process which is used by Medi-Cal. This procedure complies with constitutional requirements and program needs. It should not be changed just for the sake of achieving a single model.

Section 14087.27: Selective Provider Contract Disputes (See also 22 C.C.R. §66344). By contract, inpatient hospital rate contracts can provide for an administrative dispute resolution procedure. Obviously, this requires flexibility since it is a negotiated dispute resolution process.

Section 14105.38: Hearing on Deletion of Drug from List of Contract Drugs. This is a special hearing procedure which gathers information for a science-based decision. It should not be merged with standard adjudicative procedures.

Section 14105.98(s): Disproportionate Share Adjustment Appeals. This is a flexible provision applicable to any appealable issues which may arise. It should not be formalized.

Section 14123: Suspension of Medi-Cal Provider (See also W&IC §14124.5 and 22 C.C.R. § 51048.1 et seq. Federal rules at 42 C.F.R. § 431.153 et seq). While the hearing on the merits is an APA hearing, related procedures such as automatic suspension and temporary suspension must be retained to ensure conformity to federal law.

Section 14123.2: Medi-Cal Provider Penalties (See also 22 C.C.R. §51485.1). This is another civil penalty provision which should be retained because of its inherent dissimilarity to typical APA-covered adjudications.

Section 14126.50: Appeals from Long Term Care Facility Rate Setting Audits (no specific regulation, but procedure under 22 C.C.R. §51016 et seq. is appropriately used). See discussion of section 14171. The same comment applies to inpatient hospital rate appeals which occur pursuant to Welfare and Institutions Code sections 14105 and 14106, although those sections do not specifically refer to a hearing requirement, and to Mental Health (Short-Doyle) Fiscal Audit Appeals pursuant to Welfare and Institutions Code section 5712.4.

Section 14171: Medi-Cal Audit and Rate Appeals (See also 22 C.C.R. §§ 51016, 51536 and 51539). This procedure is well established and understood by the provider community. The APA is singularly inappropriate for these types of hearings because both the issues and the procedures are unique to the financial audit and ratesetting environment.

Section 14300: Intent to Contract with Prepaid Health Plan (PHP). This section provides for a public hearing, at the request of any person affected by the contract, when the Department of Health Services intends to enter into a PHP contract (new or renewal). The Director must find that the hearing request is reasonable and a public hearing is warranted. This is more in the nature of an information-gathering hearing than an adjudicative hearing.

Section 14450: PHP Contract Non-Renewal. Although this statute does not require a hearing upon non-renewal, since failure to renew must be for cause, the Department does provide a hearing upon request, using suitable procedures. PHP beneficiary fair hearings under subsection (a)(1) use the existing welfare fair hearing procedure.

5. Hearings Conducted Under Regulations

22 C.C.R. section 40245: Beneficiary grievance appeal to Director for Rural Health program.

6. Hearings Conducted By Agreement With Appealing Party

The Department of Health Services periodically provides hearing rights which are neither required by statute nor established through practice. Usually, the hearing procedures in 22 C.C.R. §51016 et seq. are utilized. It could be an unfortunate effect of the proposed new APA to have such hearings either cease to happen or be forced into an APA proceeding conducted by the Office of Administrative Hearings (since no statute provides an exemption). We would strongly urge specific statutory recognition of an agency's right to provide its own chosen hearing procedure in situations where a hearing is not clearly required, but may be in the public interest.

Exhibit

Statutes Applicable to Department of Health Services

Gov't Code § 19230. Policy of state

19230. The Legislature hereby declares that:

(a) It is the policy of this state to encourage and enable individuals with a disability to participate fully in the social and economic life of the state and to engage in remunerative employment.

(b) It is the policy of this state that qualified individuals with a disability shall be employed in the state service, the service of the political subdivisions of the state, in public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the nondisabled, unless it is shown that the particular disability is job related.

(c) It is the policy of this state that a department, agency, or commission shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee who is an individual with a disability, unless the hiring authority can demonstrate that the accommodation would impose an undue hardship on the operation of its program. A department shall not deny any employment opportunity to a qualified applicant or employee who is an individual with a disability if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the applicant or employee.

Gov't Code § 19231. Definitions; determination of undue hardship

19231. (a) As used in this article, the following definitions apply:

(1) "Individual with a disability" means any individual who (A) has a physical or mental impairment which substantially limits one or more of that individual's major life activities, (B) has a record of the impairment, or (C) is regarded as having such an impairment.

An individual with a disability is "substantially limited" if he or she is likely to experience difficulty in securing, retaining, or advancing in employment because of a disability.

(2) "Reasonable accommodation" means both of the following:

(A) Making facilities used by employees readily accessible to and usable by disabled persons.

(B) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate

adjustment or modification or examinations, training materials or policies, provision of qualified readers or interpreters, and other similar accommodations.

(b) Undue hardship on the operation of a department's program shall be judged on all of the following:

(1) The overall size of the department's program with respect to the number of employees, the number and type of facilities, and the size of the department's budget.

(2) The type of departmental operation, including composition and structure of the department work force.

(3) The nature and cost of the accommodation needed.

Gov't Code § 19232. Affirmative action

19232. Each state agency shall be responsible for establishing an effective affirmative action program to ensure individuals with a disability, who are capable of remunerative employment, access to positions in state service on an equal and competitive basis with the general population.

Each state agency shall develop and implement an affirmative action employment plan for individuals with a disability, which shall include goals and timetables. These goals and timetables shall be set annually for disabilities identified pursuant to guidelines established by the State Personnel Board, and shall be submitted to the board no later than June 1 of each year beginning in 1978, for review and approval or modification. Goals and timetables shall be made available to the public upon request.

Gov't Code § 19233. Responsibilities of State Personnel Board

19233. The State Personnel Board shall be responsible for the following:

(a) Outline specific actions to improve the representation of individuals with a disability in the state work force and to ensure equal and fair employment practices for employees who are individuals with a disability.

(b) Survey the number of individuals with a disability in each department by at least job category and salary range for the purpose of developing goals and timetables pursuant to Section 19232 and compare those numbers with the number of individuals with a disability in the work force.

(c) Establish guidelines for state agencies and departments to set goals and timetables to improve the representation of individuals with a disability in the state work force. Goals and timetables shall be set by at least job category.

Gov't Code § 19234. Annual review of hiring activities by state agencies

19234. Each state agency shall annually review its hiring activities designed to achieve the employment objectives established pursuant to subdivision (c) of Section 19233 to determine if any category of individuals with a disability have been disproportionately excluded on a non-job-related basis from employment. If

any category has been so excluded, the agency shall correct that underrepresentation.

Gov't Code § 19236. Technical and other assistance

19236. The State Personnel Board shall provide technical assistance, statewide advocacy, coordination, and monitoring of plans to overcome any underrepresentation determined pursuant to Section 19234.

Gov't Code § 19237. Annual report

19237. On or before November 15 of each year, beginning in 1978, the State Personnel Board shall report to the Governor and the Legislature on the current activity, future plans, and past accomplishments of the overall employment program for individuals with a disability in state government, including an evaluation of the achievement of annual employment objectives.

Gov't Code § 19571. Against whom adverse action may be taken

19571. In conformity with this article and the board rule, adverse action may be taken against any employee, or person whose name appears on any employment list for any cause for discipline specified in this article.

Gov't Code § 19572. Causes for discipline

19572. Each of the following constitutes cause for discipline of an employee, or person whose name appears on any employment list:

(a) Fraud in securing appointment.

(b) Incompetency.

(c) Inefficiency.

(d) Inexcusable neglect of duty.

(e) Insubordination.

(f) Dishonesty.

(g) Drunkenness on duty.

(h) Intemperance.

(i) Addiction to the use of controlled substances.

(j) Inexcusable absence without leave.

(k) Conviction of a felony or conviction of a misdemeanor involving moral turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude is deemed to be a conviction within the meaning of this section.

(*l*) Immorality.

(m) Discourteous treatment of the public or other employees.

(n) Improper political activity.

(o) Willful disobedience.

(p) Misuse of state property.

(q) Violation of this part or board rule.

(r) Violation of the prohibitions set forth in accordance with Section 19990.

(s) Refusal to take and subscribe any oath or affirmation which is required by law in connection with the employment.

(t) Other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the appointing authority or the person's employment.

(u) Any negligence, recklessness, or intentional act which results in the death of a patient of a state hospital serving the mentally disabled or the developmentally disabled.

(v) The use during duty hours, for training or target practice, of any material which is not authorized therefor by the appointing power.

(w) Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, physical handicap, marital status, sex, or age, against the public or other employees while acting in the capacity of a state employee.

(x) Unlawful retaliation against any other state officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of, the Attorney General, or any other appropriate authority, any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related thereto.

Gov't Code § 19574. Who may take adverse action against employee; notice

19574. The appointing power, or its authorized representative, may take adverse action against an employee for one or more of the causes for discipline specified in this article. Adverse action is valid only if a written notice is served on the employee prior to the effective date of the action, as defined by board rule. The notice shall be served upon the employee either personally or by mail and shall include: (a) a statement of the nature of the adverse action; (b) the effective date of the action; (c) a statement of the reasons therefor in ordinary language; (d) a statement advising the employee of the right to answer the notice orally or in writing; and (e) a statement advising the employee of the time within which an appeal must be filed. The notice shall be filed with the board not later than 15 calendar days after the effective date of the adverse action.

Gov't Code § 19574.1. Inspection of documents; interview of other employees

19574.1. (a) An employee who has been served with notice of adverse action, or a representative designated by the employee, shall have the right to inspect any documents in the possession of, or under the control of, the appointing power which are relevant to the adverse action taken or which would constitute "relevant evidence" as defined in Section 210 of the Evidence Code. The employee, or the designated representative, shall also have the right to interview other employees having knowledge of the acts or omissions upon which the adverse action was

based. Interviews of other employees and inspection of documents shall be at times and places reasonable for the employee and for the appointing power.

(b) The appointing power shall make all reasonable efforts necessary to assure the cooperation of any other employees interviewed pursuant to this section.

Gov't Code § 19574.2. Petition to compel discovery

19574.2. (a) Any party claiming that his or her request for discovery pursuant to Section 19574.1 has not been complied with may serve and file a petition to compel discovery with the Hearing Office of the State Personnel Board, naming as respondent the party refusing or failing to comply with Section 19574.1. The petition shall state facts showing that the respondent party failed or refused to comply with Section 19574.1, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under Section 19574.1, and the ground or grounds of respondent's refusal so far as known to petitioner.

(b) The petition shall be served upon respondent party and filed within 14 days after the respondent party first evidenced his or her failure or refusal to comply with Section 19574.1 or within 30 days after the request was made and the party has failed to reply to the request, whichever period is longer. However, no petition may be filed within 15 days of the date set for commencement of the administrative hearing, except upon a petition and a determination by the administrative law judge of good cause. In determining good cause, the administrative law judge shall consider the necessity and reasons for the discovery, the diligence or lack of diligence of the moving party, whether the granting of the petition will delay the commencement of the administrative hearing on the date set, and the possible prejudice of the action to any party. The respondent shall have a right to file a written answer to the petition. Any answer shall be filed with the Hearing Office of the State Personnel Board and the petitioner within 15 days of service of the petition.

Unless otherwise stipulated by the parties and as provided by this section, the administrative law judge shall review the petition and any response filed by the respondent and issue a decision granting or denying the petition within 20 days after the filing of the petition. Nothing in this section shall preclude the administrative law judge from determining that an evidentiary hearing shall be conducted prior to the issuance of a decision on the petition. In the event that a hearing is ordered, the decision of the administrative law judge shall be issued within 20 days of the closing of the hearing.

A party aggrieved by the decision of the administrative law judge may, within 30 days of service of the decision, file a petition to compel discovery in the superior court for the county in which the administrative hearing will be held. The petition shall be served on the respondent party.

(c) If from a reading of the petition the court is satisfied that the petition sets forth good cause for relief, the court shall issue an order to show cause directed to the respondent party; otherwise the court shall enter an order denying the petition.

The order to show cause shall be served upon the respondent and his or her attorney of record in the administrative proceeding by personal delivery or certified mail and shall be returnable no earlier than 10 days from its issuance nor later than 30 days after the filing of the petition. The respondent party shall have the right to serve and file a written answer or other response to the petition and order to show cause.

(d) The court may, in its discretion, order the administrative proceeding stayed during the pendency of the proceeding, and, if necessary, for a reasonable time thereafter to afford the parties time to comply with the court order.

(e) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under Section 19574.1, or is privileged against disclosure under Section 19574.1, the court may order lodged with it matters which are provided in subdivision (b) of Section 915 of the Evidence Code and shall examine the matters in accordance with the provisions thereof.

(f) The court shall decide the case on the matters examined by the court in camera, the papers filed by the parties, and such oral argument and additional evidence as the court may allow.

(g) Unless otherwise stipulated by the parties, the court shall no later than 45 days after the filing of the petition file its order denying or granting the petition; provided, however, that the court may on its own motion for good cause extend the time an additional 45 days. The order of the court shall be in writing setting forth the matters or parts the petitioner is entitled to discover under Section 19574.1. A copy of the order shall forthwith be served by mail by the clerk upon the parties. Where the order grants the petition in whole or in part, the order shall not become effective until 10 days after the date the order is served by the clerk. Where the order denies relief to the petitioning party, the order shall be effective on the date it is served by the clerk.

(h) The order of the superior court shall be final and, except for this subdivision, shall not be subject to review by appeal. A party aggrieved by the order, or any part thereof, may within 30 days after the service of the superior court's order serve and file in the district court of appeal for the district in which the superior court is located, a petition for a writ of mandamus to compel the superior court to set aside, or otherwise modify, its order. Where a review is sought from an order granting discovery, the order of the trial court and the administrative proceeding shall be stayed upon the filing of the petition for writ of mandamus; provided, however, that the court of appeal may dissolve or modify the stay thereafter, if it is in the public interest to do so. Where the review is sought from a denial of discovery, neither the trial court's order nor the administrative proceeding shall be stayed by the court of appeal except upon a clear showing of probable error.

(i) Where the superior court finds that a party or his or her attorney, without substantial justification, failed or refused to comply with Section 19574.1, or, without substantial justification, filed a petition to compel discovery pursuant to

this section, or, without substantial justification, failed to comply with any order of court made pursuant to this section, the court may award court costs and reasonable attorney fees to the opposing party. Nothing in this subdivision shall limit the power of the superior court to compel obedience to its orders by contempt proceedings.

Gov't Code § 19574.5. Leave of absence pending investigation

19574.5. Pending investigation by the appointing power of accusations against an employee involving misappropriation of public funds or property, drug addiction, mistreatment of persons in a state institution, immorality, or acts which would constitute a felony or a misdemeanor involving moral turpitude, the appointing power may order the employee on leave of absence for not to exceed 15 days. The leave may be terminated by the appointing power by giving 48 hours' notice in writing to the employee.

If adverse action is not taken on or before the date such a leave is terminated, the leave shall be with pay.

If adverse action is taken on or before the date such leave is terminated, the adverse action may be taken retroactive to any date on or after the date the employee went on leave. Notwithstanding the provisions of Section 19574, the adverse action, under such circumstances, shall be valid if written notice is served upon the employee and filed with the board not later than 15 calendar days after the employee is notified of the adverse action.

Gov't Code § 19575. Answer; failure to answer

19575. No later than 20 calendar days after service of the notice of adverse action, the employee may file with the board a written answer to the notice, which answer shall be deemed to be a denial of all of the allegations of the notice of adverse action not expressly admitted and a request for hearing or investigation as provided in this article. With the consent of the board or its authorized representative an amended answer may subsequently be filed. If the employee fails to answer within the time specified or after answer withdraws his appeal the adverse action taken by the appointing power shall be final. A copy of the employee's answer and of any amended answer shall promptly be given by the board to the appointing power.

Gov't Code § 19575.5. Amended or supplemental notice

19575.5. At any time before an employee's appeal is submitted to the board or its authorized representative for decision, the appointing power may with the consent of the board or its authorized representative serve on the employee and file with the board an amended or supplemental notice of adverse action. If the amended or supplemental notice presents new causes or allegations the employee shall be afforded a reasonable opportunity to prepare his defense thereto, but he shall not be entitled to file a further answer unless the board or its authorized

representative so orders. Any new causes or allegations shall be deemed controverted and any objections to the amended or supplemental causes or allegations may be made orally at the hearing or investigation and shall be noted in the record.

Gov't Code § 19576. Answer by employee suspended without pay; investigation; hearing

19576. Whenever an answer is filed by an employee who has been suspended without pay for five days or less or who has received a formal reprimand or up to a one-step reduction in pay for four months or less the board or its authorized representative shall make an investigation with or without a hearing as it deems necessary; however, in the event an employee receives one of these actions under subdivision (r) of Section 19572 for behavior or acts outside of duty hours, he shall, if he files an answer to the action, be afforded a hearing; or if he receives one of the cited actions in more than three instances in any 12-month period, he shall upon each additional action within the same 12-month period be afforded a hearing if he files an answer to the action.

If the provisions of this section concerning whether a hearing should be held are in conflict with the provisions of a memorandum of understanding reached pursuant to the State Employer-Employee Relations Act (SEERA), commencing with Section 3512, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

Gov't Code § 19578. Hearing; conduct of proceedings

19578. Except as provided in Section 19576, whenever an answer is filed to an adverse action, the board or its authorized representative shall within a reasonable time hold a hearing. The board shall notify the parties of the time and place of the hearing. Such hearing shall be conducted in accordance with the provisions of Section 11513 of the Government Code, except that the employee and other persons may be examined as provided in Section 19580, and the parties may submit all proper and competent evidence against or in support of the causes.

Gov't Code § 19579. Failure of party to proceed at hearing

19579. Failure of either party (the employee, the employer, or their representatives) to proceed at the hearing shall be deemed a withdrawal of the action or appeal, unless the hearing is continued by mutual agreement of the parties, or upon showing of good cause.

Gov't Code § 19580. Examination of employee and others

19580. Either by deposition or at the hearing the employee may be examined and may examine or cause any person to be examined under Section 776 of the Evidence Code.

Gov't Code § 19581. Issuance of subpoenas

19581. The board or its authorized representative shall issue subpenas for witnesses for the employee upon his written request and at his cost. The board or its authorized representative may require such costs to be prepaid.

Gov't Code § 19581.5. Prehearing or settlement conference

19581.5. Prior to the scheduling of a contested adverse action or rejection on probation for hearing, the board may require or any party may request a prehearing or settlement conference. The administrative law judge presiding over the settlement conference shall not preside over any subsequent hearing on the contested adverse action or rejection on probation unless agreed to by both parties.

Gov't Code § 19582. Hearings; decisions

19582. (a) Hearings may be held by the board, or by any authorized representative, but the board shall render the decision which in its judgment is just and proper.

During a hearing, after the appointing authority has completed the opening statement or the presentation of evidence, the employee, without waiving his or her right to offer evidence in the event the motion is not granted, may move for a dismissal of the charges.

If it appears that the evidence presented supports the granting of the motion as to some but not all of the issues involved in the action, the board or the authorized representative shall grant the motion as to those issues and the action shall proceed as to the issues remaining. Despite the granting of the motion, no judgment shall be entered prior to a final determination of the action on the remaining issues, and shall be subject to final review and approval by the board.

(b) If a contested case is heard by an authorized representative he or she shall prepare a proposed decision in a form that may be adopted as the decision in the case. A copy of the proposed decision shall be filed by the board as a public record and furnished to each party within 10 days after the proposed decision is filed with the board. The board itself may adopt the proposed decision in its entirety, may remand the proposed decision, or may reduce the adverse action set forth therein and adopt the balance of the proposed decision.

(c) If the proposed decision is not remanded or adopted as provided in subdivision (b), each party shall be notified of the action, and the board itself may decide the case upon the record, including the transcript, with or without taking any additional evidence, or may refer the case to the same or another authorized representative to take additional evidence. If the case is so assigned to an authorized representative, he or she shall prepare a proposed decision as provided in subdivision (b) upon the additional evidence and the transcript and other papers which are part of the record of the prior hearing. A copy of the proposed decision shall be furnished to each party. The board itself shall decide no case provided for in this subdivision without affording the parties the opportunity to present oral and

written argument before the board itself. If additional oral evidence is introduced before the board itself, no board member may vote unless he or she heard the additional oral evidence.

(d) In arriving at a decision or a proposed decision, the board or its authorized representative may consider any prior suspension or suspensions of appellant by authority of any appointing power, or any prior proceedings under this article.

(e) The decision shall be in writing and contain findings of fact and the adverse action, if any. The findings may be stated in the language of the pleadings or by reference thereto. Copies of the decision shall be delivered to the parties personally or sent to them by registered mail.

Gov't Code § 19582.5. Precedential decisions

19582.5. The board may designate certain of its decisions as precedents. Precedential decisions shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3. The board may provide by rule for the reconsideration of a previously issued decision to determine whether or not it shall be designated as a precedent decision. All decisions designated as precedents shall be published in a manner determined by the board.

Gov't Code § 19583. Decision; modification or revocation of adverse action

19583. The board shall render a decision within a reasonable time after the hearing or investigation. The adverse action taken by the appointing power shall stand unless modified or revoked by the board. If the board finds that the cause or causes for which the adverse action was imposed were insufficient or not sustained, or that the employee was justified in the course of conduct upon which the causes were based, it may modify or revoke the adverse action and it may order the employee returned to his or her position with appropriate restoration of backpay and lost benefits either as of the date of the adverse action or as of such later date as it may specify. The decision of the board shall be entered upon the minutes of the board and the official roster.

Gov't Code § 19583.1. Effect of dismissal of employee from service

19583.1. Dismissal of an employee from the service shall, unless otherwise ordered by the board:

(a) Constitute a dismissal as of the same date from any and all positions which the employee may hold in the state civil service.

(b) Result in the automatic removal of the employee's name from any and all employment lists on which it may appear.

(c) Terminate the salary of the employee as of the date of dismissal except that he shall be paid any unpaid salary, and paid for any and all unused and accumulated vacation and any and all accumulated compensating time off or overtime to his credit as of the date of dismissal.

Gov't Code § 19583.5. Filing charges against employee

19583.5. (a) Any person, except for a current ward or inmate of the California Youth Authority or the Department of Corrections, with the consent of the board or the appointing power may file charges against an employee requesting that adverse action be taken for one or more causes for discipline specified in this article. Any request of the board to file charges pursuant to this section shall be filed within one year of the event or events that led to the filing. The employee against whom the charges are filed shall have a right to answer as provided in this article. In all of these cases, a hearing shall be conducted in accord with this article and if the board finds that the charges are true it shall have the power to take any adverse action as in its judgment is just and proper.

(b) This section shall not be construed to supersede Section 19682.

Gov't Code § 19584. Payment of salary; reinstatement of benefits

19584. Whenever the board revokes or modifies an adverse action and orders that the employee be returned to his or her position, it shall direct the payment of salary and all interest accrued thereto, and the reinstatement of all benefits that otherwise would have normally accrued. Benefits shall include, but shall not be limited to, retirement, medical, dental, and seniority benefits pursuant to memoranda of understanding for that classification of employee to the employee for such period of time as the board finds the adverse action was improperly in effect.

Salary shall not be authorized or paid for any portion of a period of adverse action that the employee was not ready, able, and willing to perform the duties of his or her position, whether such adverse action is valid or not or the causes on which it is based state facts sufficient to constitute cause for discipline.

From any such salary due there shall be deducted compensation that the employee earned, or might reasonably have earned, during any period commencing more than six months after the initial date of the suspension.

Gov't Code § 19585. Failure to meet requirement for continuing employment

19585. (a) This section shall apply to permanent and probationary employees and may be used in lieu of adverse action and rejection during probation when the only cause for action against an employee is his or her failure to meet a requirement for continuing employment, as provided in this section. This section shall not apply to cases subject to the provisions of termination or demotion for medical reasons or retirement for disability.

(b) An appointing power may terminate, demote, or transfer an employee who fails to meet the requirement for continuing employment that is prescribed by the board on or after January 1, 1986, in the specification for the classification to which the employee is appointed. Notwithstanding the foregoing, as prescribed by Article 11 (commencing with Section 19991) of Chapter 1 of Part 2.6, the appointing power may grant the employee a leave of absence in lieu of one of the

actions specified above. In prescribing requirements for continuing employment, the board may specify standards to ensure that the requirements are consistently applied. The board may also specify when separation from a position for failure to meet requirements for continuing employment also constitutes separation from former positions that the employee held in other classifications that have the same or greater requirements for continuing employment.

(c) The federal Immigration Reform and Control Act of 1986 requires termination of an employee for failure to meet the employment eligibility requirements of that act, and if this is the only cause for action against that employee, the termination shall be carried out pursuant to this section. If a person fails to meet the employment eligibility requirements of the federal Immigration Reform and Control Act of 1986, that information, when used under this section, except for purposes of the appeals process, shall be confidential, as provided in the federal Immigration Reform and Control Act of 1986.

(d) For the purposes of this section, requirements for continuing employment shall be limited to the acquisition or retention of specified licenses, certificates, registrations, or other professional qualifications, education, or eligibility for continuing employment or advancement to the fully qualified level within a particular class series. The board shall prescribe procedures to ensure that employees affected by the requirements are informed of them. Requirements for continuing employment that are established for the purposes of this section shall not include medical, physical ability, work, or academy performance standards.

(e) For the purposes of this section, an employee who has filed a proper and timely application for renewal of a required license, registration, or certificate shall be considered as having maintained the license, registration, or certificate unless it is subsequently denied, revoked, or suspended.

(f) The employee shall receive at least five days' written notice of termination, demotion, or transfer and shall have the right to appeal the action to the board.

(g) When the requirements for continuing employment have been regained, terminated, demoted, or transferred employees may be reinstated pursuant to Section 19140.

(h) Any action under this section shall be considered nondisciplinary for the purposes of the State Civil Service Act and board rules.

Gov't Code § 19586. Rehearing; notice; grant or denial of petition

19586. Within thirty days after receipt of a copy of the decision rendered by the board in a proceeding under this article, the employee or the appointing power may apply for a rehearing by filing with the board a written petition therefor. Within thirty days after such filing, the board shall cause notice thereof to be served upon the other parties to the proceedings by mailing to each a copy of the petition for rehearing, in the same manner as prescribed for notice of hearing.

Within sixty days after service of notice of filing of a petition for rehearing, the board shall either grant or deny the petition in whole or in part. Failure to act upon a petition for rehearing within this sixty-day period is a denial of the petition.

Gov't Code § 19587. Setting matter down for hearing; conduct of hearing

19587. If the petition for rehearing is granted, the matter shall be set down for rehearing by the board or its authorized representative. If the matter is set for hearing before an authorized representative, the hearing shall be conducted as to the matters on which granted in substantially the same manner and under like rules of procedure as an original hearing upon charges under this article. If the matter is set for hearing before the board itself, the board may provide the parties with an opportunity to provide written or oral argument and may decide the case upon the record, including the transcript, with or without taking additional evidence.

Gov't Code § 19588. Failure to apply for rehearing

19588. The right to petition a court for writ of mandate, or to bring or maintain any action or proceeding based on or related to any civil service law of this State or the administration thereof shall not be affected by the failure to apply for rehearing by filing written petition therefor with the board.

Gov't Code § 19589. Letters of reprimand; removal and destruction

19589. Letters of reprimand shall be removed from the personnel file of the state employee and destroyed not later than three years from the date the letters were issued.

Gov't Code § 19996.1. Resignations

19996.1. (a) Resignations from the state civil service are subject to department rules. A resignation, except as provided in this section, does not jeopardize any rights and privileges of the employee except those pertaining to the position from which he or she resigns. A written resignation may expressly waive all or any rights or privileges provided for by this chapter, including but not limited to, accumulated vacation, and in such event the records of the department shall be made to conform therewith. No resignation shall be set aside on the ground that it was given or obtained pursuant to or by reason of mistake, fraud, duress, undue influence or that for any other reason it was not the free, voluntary and binding act of the person resigning, unless a petition to set it aside is filed with the department within 30 days after the last date upon which services to the state are rendered or the date the resignation is tendered to the appointing power, whichever is later. In the event a resignation is set aside pursuant to this section, the person resigning shall be reinstated to his or her former position and paid his or her salary for the period he or she was removed from state service as the result of such resignation. From any such salary due there shall be deducted compensation that the employee

earned, or might reasonably have earned, during any period commencing more than six months after the initial date of resignation.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

Pub. Cont. Code § 10345. Notice of proposed award; protests

10345. Contracts awarded under the provisions of Section 10344 shall be awarded only after a notice of the proposed award has been posted in the offices of the contracting agency for five working days. If, prior to the award, any bidder files a protest with the awarding authority and department against the awarding of the contract, the contract shall not be awarded until either the protest has been withdrawn or the department has decided the matter.

Within five days after filing the protest, the protesting bidder shall file with the department and awarding agency a full and complete written statement specifying the grounds for the protest. Protests shall be limited to the following grounds:

(a) The agency failed to follow the procedures specified in either subdivision (b) or (c) of Section 10344.

(b) The agency failed to apply correctly the standards for reviewing the format requirements or evaluating the proposals as specified in the request for proposal.

(c) The agency used the evaluation and selection procedure in subdivision (b) of Section 10344, but is proposing to award the contract to a bidder other than the lowest responsible bidder.

(d) The agency used the evaluation and selection procedure in subdivision (c) of Section 10344, but failed to follow the methods for evaluating and scoring the proposals specified in the request for proposal.

(e) The agency used the evaluation and selection procedure in subdivision (c) of Section 10344, but is proposing to award the contract to a bidder other than the bidder given the highest score by the agency evaluation committee.

The department shall establish written procedures for deciding protests under this section.

Health & Safety Code § 255. Uniform standards of financial eligibility for treatment services

255. (a) The department shall establish uniform standards of financial eligibility for treatment services under the California Children's Services Program. Financial eligibility for treatment services under this program shall be limited to persons in families with an adjusted gross income of forty thousand dollars ($40,000) or less in the most recent tax year, as calculated for California state income tax purposes. However, the director may authorize treatment services for persons in families

with higher incomes if the estimated cost of care to the family in one year is expected to exceed 20 percent of the family's adjusted gross income.

(b) Necessary medical therapy treatment services under the California Children's Services Program rendered in the public schools shall be exempt from financial eligibility standards and enrollment fee requirements for such services when rendered to any handicapped child whose educational or physical development would be impeded without such services.

(c) All counties shall use the uniform standards for financial eligibility and enrollment fees established by the department. All enrollment fees shall be used in support of the California Children's Services Program.

(d) Annually, every family with a child eligible to receive services under this article shall pay a fee of twenty dollars ($20), which shall be in addition to any other program fees for which the family is liable. This assessment shall not apply to any child who is eligible for full scope Medi-Cal benefits without a share of cost, for children receiving therapy through the California Children's Services Program as a related service in their individualized education plans, or for children from families having incomes of less than 100 percent of the federal poverty level.

Health & Safety Code § 310. Legislative finding

310. The Legislature finds that medical, educational and psychological evidence increasingly points to adequate nutrition as a determinant not only of good physical health but also of full intellectual development and educational achievement, with adequate nutrition in the earliest months and years being particularly important for full development of the child's mind and body, that problems of child nutrition cut across income lines and can result not only from low income but also from parental ignorance or neglect and that there is a need for a statewide child nutrition program which has the potential of reaching all pregnant women and mothers of infants.

Health & Safety Code § 311. Program for providing nutritional food supplements

311. The state department may conduct a statewide program for providing nutritional food supplements to low-income pregnant women, low-income postpartum and lactating women, and low-income infants and children under five years of age, who have been determined to be at nutritional risk by a health professional, based on criteria established by the state department. Any program established pursuant to this section shall do all of the following:

(a) Comply with all the requirements of this article.

(b) Be conducted only if a special project is authorized by inclusion in the Budget Act or notification is provided to the Legislature pursuant to Section 28 of the Budget Act, and federal funds are appropriated therefor.

(c) Be known as the California Special Supplemental Food Program for Women, Infants, and Children.

Health & Safety Code § 311.5. Definitions

311.5. As used in this article, the following definitions shall apply:

(a) "Health professional" means a physician and surgeon, registered nurse, nutritionist, dietitian, or state or local medically trained health official, who is competent to professionally evaluate nutritional need and to authorize supplemental foods, as determined by the state department.

(b) "Low income" means an income of not more than 185 percent of the poverty level as determined by the federal poverty income guidelines promulgated by the United States Department of Health and Human Services.

(c) "Recipient" means low-income pregnant women, low-income postpartum and lactating women, and low-income infants and children under five years of age, who are determined to be at nutritional risk by a health professional, based on criteria established by the state department.

(d) "Nutrition coupon" means a check which is limited as to value, food type, and food quantity and which has a limited period of validity.

Health & Safety Code § 312. Duties of department on establishing program

312. The department, under any program established pursuant to this article, shall do all of the following:

(a) Establish guidelines to determine resource allocation giving consideration to an area's nutritional need.

(b) Designate the counties within which a program will be conducted, with the approval of those counties.

(c) Establish the minimum nutritional requirements for recipients.

(d) Designate specific supplemental foods to meet the minimum nutritional requirements for recipients.

(e) Develop and maintain a system for the delivery of supplemental foods to recipients through the distribution of supplemental foods designated in subdivision (d) and nutrition coupons when other methods of delivery are impractical.

(f)(1) Develop and coordinate a smoking cessation component of program operations, with consideration of local agency plans, needs, and available tobacco education resources.

(2) In consultation with the directors of local agencies and with other individuals with expertise in the field of smoking cessation, identify and promulgate a strategy for smoking cessation in the state plan of operation and administration of the WIC program, including, but not limited to all of the following:

(A) Designating an agency staff member to coordinate smoking cessation efforts.

(B) Providing training on smoking cessation and tobacco education to designated staff members of local agencies who are responsible for counseling participants in the program.

(3) Develop and implement procedures to ensure that tobacco use screening and education, including, but not limited to, smoking cessation counseling and referrals where appropriate, are offered to all participants.

(g)(1) Establish guidelines and criteria to be used by participating local agencies, when determining recipient eligibility, which require, in addition to a recipient being a low-income pregnant woman, or a low-income postpartum and lactating woman, or a low-income infant or child under five years of age, that the recipient be at nutritional risk.

(2) A health professional on the staff of the local agency shall determine if a person is at nutritional risk through a medical or nutritional assessment. This determination may be based on referral data submitted by a health professional not on the staff of the local agency. The person's height or length and weight shall be measured, and hematological test for anemia, such as a hemoglobin or hematocrit test shall be performed. However, the tests shall not be required for infants under six months of age. In addition, the blood test shall not be required for children who were determined to be within the normal range at their last program certification. However, the blood test shall be performed on the children at least once a year. A breastfeeding woman may be certified if the child she is breastfeeding is determined to be at nutritional risk and the woman meets the income eligibility criteria.

(h) Operate the program as an adjunct to existing health services.

(i) Seek federal funds to carry out the provisions of this article.

Health & Safety Code § 312.3. Revolving fund to reimburse local agencies

312.3. The state department may establish a revolving fund for use in reimbursing local agencies for costs incurred in the administration of the California Special Supplemental Food Program for Women, Infants, and Children. All expenditures from the fund may be made only in accordance with law and contractual agreements between the state department and participating local agencies, and for the purposes specified in local agency contracts. All disbursements from the fund shall be substantiated by vouchers or itemized statements.

Health & Safety Code § 312.5. Nutrition coupons

312.5. Nutrition coupons in an amount sufficient to meet the nutritional needs of a recipient for one month shall be granted to a recipient by facilities and persons referred to in subdivision (f) of Section 312 upon the written finding of nutritional need by the recipient's physician or other health professional.

Health & Safety Code § 313. Contracting with bank for redemption of coupons

313. The state department may, under any program established pursuant to this article, investigate the feasibility of contracting with one or more banks in the area served by the program for the redemption of nutrition coupons.

Health & Safety Code § 313.5. Determination of need for continuation of program

313.5. The state department, under any program established pursuant to this article, may collect data to determine the need for and the continuation of a supplemental nutritional program for recipients under this article.

Health & Safety Code § 314. Food vendors authorized to accept coupons

314. The state department, under any program established pursuant to this article, shall authorize retail food vendors, by written agreement, to accept nutrition coupons. The state department shall authorize an appropriate number and distribution of food vendors in order to assure adequate participant convenience and access and to assure that state or local officials can effectively manage review of authorized food vendors in their jurisdictions. The state department shall establish criteria to limit the number of retail food vendors with which the state department enters into agreements. The criteria, at a minimum, shall include:

(a) The prices the vendor charges for foods in relation to other stores in the area.

(b) The ability of the state department to ensure that authorized supplemental foods will be provided through in-store compliance purchases.

(c) The adequacy of the shelf stock of the authorized supplemental foods.

(d) Past performance of the vendor in compliance with this article and with the provisions of the Food Stamp Program.

Health & Safety Code § 314.5. Duties of vendors

314.5. The state department, under any program established pursuant to this article, shall ensure that, at a minimum, the authorized vendor shall do all of the following:

(a) Redeem nutrition coupons only from persons bearing appropriate identification provided by the state department.

(b) Redeem nutrition coupons for only those foods specified thereon.

(c) Redeem nutrition coupons at an amount which is the same as, or lesser than, that charged other customers for identical foods.

(d) Redeem and deposit nutrition coupons during specified valid periods.

(e) Deposit the nutrition coupons directly in the vendor's bank account and not transfer them for cash payment, credit, or any other benefit to any party other than the vendor's bank or the state.

(f) Maintain for a period of at least three years records, which shall include, but not be limited to, all of the following:

(1) Inventory records showing all purchases, both wholesale and retail, in the form of invoices which identify the quantity and prices of specified authorized supplemental foods.

(2) Sales and use tax returns.

(3) Books of account.

(4) Other pertinent records which the state department determines are necessary to substantiate the volume and prices charged to the state department through the nutrition coupons redeemed by the vendor.

Health & Safety Code § 315. Guidelines; information printed on coupons

315. The state department shall inform the retail food vendors of, and include in the written agreement with, the vendors, guidelines consistent with Section 314.5 and shall print on each coupon the following:

(a) Specific supplemental foods and the quantities thereof for which the coupon may be redeemed.

(b) The valid period of the nutrition coupon.

(c) The maximum value for which the nutrition coupon may be redeemed.

Health & Safety Code § 315.5. Sanctions for improper redemption

315.5. A retail food vendor or any other person who knowingly redeems coupons in excess of the price charged other customers for identical foods, or who provides anything of value other than the specified foods, or who fails to provide inventory records to substantiate purchases for resale of authorized supplemental foods is subject to all sanctions set forth in federal regulation for the Special Supplemental Food Program for Women, Infants, and Children, which is provided for in Section 246 and following of Title 7 of the Code of Federal Regulations. The state department may disqualify a food vendor who is currently disqualified from the Food Stamp Program.

Health & Safety Code § 316. Penalties for willful misapplication of benefits

316. Any person or persons who have embezzled, willfully misapplied, stolen, or fraudulently obtained funds or benefits pursuant to this article shall be subject to the penalties set forth in federal regulations for the Special Supplemental Food Program for Women, Infants, and Children, which is provided for in Section 246 and following of Title 7 of the Code of Federal Regulations.

Health & Safety Code § 317. Investigation and verification

317. Any officer, employee, or agent of the state department may enter the place of business of any vendor transacting nutrition coupons to verify food prices, to witness or investigate procedures, to conduct financial audits, or to otherwise determine compliance of the vendor with the provisions of this article and the provisions of the vendor agreement.

Health & Safety Code § 317.3. Certificate of amounts unpaid; judgment; judicial review

317.3. (a) Except as provided in subdivision (c), if any amount is due and payable and unpaid as a result of an overpayment to a vendor or local agency established under this article which is identified through an audit or examination conducted by or on behalf of the director and the state department has issued an audit or examination finding, or an administrative decision resulting from an

administrative appeal of the audit or examination finding which has become final, the director may file in the office of the County Clerk of Sacramento County and with the county clerk of the county in which the vendor has his or her principal place of business, a certificate containing the following:

(1) The amount due and owing and unpaid plus the applicable interest at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding, made pursuant to Section 316.5 is mailed to the vendor or local agency.

(2) A statement that the director has complied with all the provisions of this article prior to the filing of the certificate.

(3) A request that judgment be entered against the vendor or local agency in the amount set forth in the certificate.

The county clerk immediately upon the filing of the certificate, shall enter a judgment for the State of California against the vendor or local agency in the amount set forth in the certificate.

Notwithstanding any provision of law to the contrary, the Special Supplemental Food Program for Women, Infants, and Children shall pay the normal fee charged by the county for the certificate of judgment.

Nothing in this subdivision shall prevent the director from using any other means available in law to recover amounts due and owing and unpaid from the vendor or local agency.

(b) The dates when the state department may file the certificate and seek judgment from the county clerk, as provided in subdivision (a), depends on whether the audit finding is appealed by the vendor or local agency.

(1) If the audit finding or lower level administrative decision is not appealed, the state department may file the certificate the day after the end of the appeal period or anytime thereafter, but not later than three years after the payment became due and owing.

(2) If the audit finding or lower level administrative decision is appealed to the director, the state department may file the certificate no earlier than 90 days after the issuance of the final decision by the director, but no later than three years after the issuance of the final decision.

(c) If the vendor seeks judicial review of the final decision of the director pursuant to Section 1094.5 of the Code of Civil Procedure, and notice of the action is properly served on the director within 90 days of the issuance of the final decision, the state department shall not file any certificate as provided in subdivision (a).

If the vendor does not seek judicial review of the final decision of the director or does not properly serve notice within 90 days from the date of the final decision of the director, the state department may file the certificate and obtain judgment pursuant to subdivision (a).

Health & Safety Code § 317.5. Recording of abstract of judgment; lien

317.5. An abstract of judgment obtained pursuant to subdivisions (a) and (b) of Section 317 or a copy thereof may be recorded with the county recorder of any county. From the time of recording, the judgment shall constitute a lien upon all real or personal property owned by the vendor at the time, or which the vendor may afterwards, but before the lien expires, acquire. The lien shall have the force, effect, and priority of a judgment lien and shall continue for 10 years from the time of recording of the abstract of judgment obtained pursuant to subdivisions (a) and (b) of Section 317 unless sooner released or otherwise discharged.

The lien may, within 10 years from the date of recording of the abstract of judgment or within 10 years from the date of the last extension of the lien in the manner herein provided, be extended by recording a new abstract in the office of the county recorder of any county. From the date of the recording the lien shall be extended for 10 years unless sooner released or otherwise discharged.

Health & Safety Code § 318. Audits of local agencies

318. The state department shall arrange for the conduct of periodic audits of participating local agencies.

Health & Safety Code § 319. Hearing procedure to appeal adverse actions

319. The department shall provide a hearing procedure whereby any food vendor or local agency may appeal any adverse action taken by the state department affecting the vendor's or local agency's participation in the California Supplemental Food Program for Women, Infants, and Children. The hearing procedure shall be in accordance with the requirements of the federal regulations for the Special Supplemental Food Program for Women, Infants, and Children, which is provided for in Section 246 and following of Title 7 of the Code of Federal Regulations.

Health & Safety Code § 530. Suspension, denial, refusal to renew, or revocation of registration

530. (a) Notwithstanding any other provisions of this article, the department upon the recommendation of the committee may suspend, deny, refuse to renew, or revoke a registration certificate issued under the provisions of this article after sufficient notice and an opportunity for a hearing and upon findings that the registered environmental health specialist has:

(1) Knowingly made a false statement of fact required to be revealed in the application for registration.

(2) Been convicted of a crime, if the crime is related to the qualifications, functions, and duties of an environmental health specialist.

(3) Knowingly made a false statement of fact required to be revealed in an application for, or renewal of, registration.

(4) Committed an act of deceit, misrepresentation, violation of contract, fraud, negligence, professional incompetence, or unethical practice.

(b) The procedure to deny, suspend, refuse to renew, or revoke an environmental health specialist registration certificate pursuant to this section shall be as follows:

(1) All cases, complaints, or allegations charging a violation of this subdivision shall be made in writing and submitted to the department.

(2) The department shall make a preliminary investigation by:

(A) Obtaining copies of all pertinent written documents (laws, reports, contacts, and correspondence).

(B) Interviewing, in person or by telephone, of all individuals involved with the issue.

(3) The department shall compile the information into a confidential case document which includes:

(A) A description of the complaint.

(B) A chronology of events.

(C) Results of the interviews.

(D) Copies of the written documents.

(4) The case document shall be submitted to each member of the committee requesting their recommendation whether or not the information warrants further investigation and an informal hearing.

(5) The department shall review committee recommendations and the preliminary investigation findings and then decide whether to dismiss the complaint or proceed to an informal committee hearing. Dismissal of the charges shall be followed by a letter to both complainant and the registered environmental health specialist involved explaining the department's action.

(6) If the decision is made to proceed with an informal hearing, the department shall request the committee to appoint one or more hearing officers to hear the case.

(A) All parties shall be notified of the time and place of the hearing.

(B) An investigation of the issue may be made by an independent professional investigator if it is felt warranted by the department and the committee. The investigation results shall be submitted to the department, committee hearing officers, complainant, and respondent prior to the hearing.

(C) The informal hearing shall permit the right to be heard (with an attorney, if desired) and the proceedings recorded.

(D) Upon the finding that a violation of this section occurred, the following disciplinary ranges may be recommended to the department by committee:

(i) Knowingly made a false statement of fact required to be revealed in the application for registration.

(I) Maximum: Revocation.

(II) Minimum: Fifteen-day suspension. Range depends on whether or not the registration was falsely approved.

(ii) Been convicted of a crime, if the crime is related to the qualifications, functions, and duties of a registered environmental health specialist.

(I) Maximum: Deny, refuse to renew, or revocation of registration.

(II) Minimum: Ninety days actual suspension.

(iii) Knowingly made a false statement of fact required to be revealed in an application for, or renewal of registration.

(I) Maximum: Revocation.

(II) Minimum: Seven day actual suspension.

(iv) Committed an act of deceit, misrepresentation, violation of contract, fraud, negligence, professional incompetence, or unethical practice.

(I) Maximum: Revocation.

(II) Minimum: Ninety days suspension stayed for three years on the following conditions of probation.

— Forty-five days actual suspension.

— The respondent shall obey all laws and regulations related to the practice of environmental health.

(c) Department action to implement denial, suspension, refusal to renew, or revocation of registration under this chapter shall be in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted by those provisions. In the event of conflict between those provisions of the Government Code and the provisions of this article, the provisions of the Government Code shall prevail.

Health & Safety Code § 1428. Contesting citation; penalties; notice of dismissal

1428. (a) If the licensee desires to contest a citation or the proposed assessment of a civil penalty therefor, the licensee shall use the processes described in subdivisions (b) and (c) for classes "AA," "A," or "B" citations. As a result of a citation review conference, a citation or the proposed assessment of a civil penalty may be affirmed, modified, or dismissed by the director or the director's designee. If the director's designee affirms, modifies, or dismisses the citation or proposed assessment of a civil penalty, he or she shall state with particularity in writing his or her reasons for that action, and shall immediately transmit a copy thereof to each party to the original complaint. If the licensee desires to contest a decision made after the citation review conference, the licensee shall inform the director in writing within 15 business days after he or she receives the decision by the director's designee.

(b) If a licensee notifies the director that he or she intends to contest a class "AA" or a class "A" citation, the licensee may first within 15 business days after service of the citation notify the director in writing of his or her request for a citation review conference. The licensee shall inform the director in writing, within 15 business days of the service of the citation or the receipt of the decision of the director's designee after the citation review conference, of the licensee's intent to adjudicate the validity of the citation in the municipal or superior court in the county in which the long-term health care facility is located. In order to perfect a judicial appeal of a contested citation, a licensee shall file a civil action in the

municipal or superior court in the county in which the long-term health care facility is located. The action shall be filed no later than 90 calendar days after a licensee notifies the director he or she intends to contest the citation, or no later than 90 days after the receipt of the decision by the director's designee after the citation review conference, and served not later than 90 days after filing. Notwithstanding any other provision of law, for those citations issued after January 1, 1993, a licensee prosecuting a judicial appeal shall file and serve an at-issue memorandum pursuant to Rule 209 of the California Rules of Court by July 1, 1993, or within six months after the state department files its answer in the appeal, whichever is later. Notwithstanding subdivision (d), the court shall dismiss the appeal upon motion of the state department if the at-issue memorandum is not filed by the facility within the period specified.

(c) If a licensee desires to contest a class "B" citation, the licensee may request, within 15 business days after service of the citation, a citation review conference, by writing the director or the director's designee of the licensee's intent to appeal the citation through the citation review conference. If the licensee wishes to appeal the citation which has been upheld in a citation review conference, the licensee shall, within 15 working days from the date the citation review conference decision was rendered, notify the director or the director's designee that he or she wishes to appeal the decision through the procedures set forth in subdivision (c) of Section 14123 of the Welfare and Institutions Code. The administrative law judge may affirm, modify, or dismiss the citation or the proposed assessment of a civil penalty. The licensee may choose to have his or her appeal heard by the administrative law judge without having first appealed the decision to a citation review conference by notifying the director in writing within 15 business days of the service of the citation.

(d) If a licensee is dissatisfied with the decision of the administrative law judge, the licensee may, in lieu of seeking judicial review of the decision as provided in Section 1094.5 of the Code of Civil Procedure, elect to submit the matter to binding arbitration by filing, within 60 days of its receipt of the decision, a request for arbitration with the American Arbitration Association. The parties shall agree upon an arbitrator designated from the American Arbitration Association in accordance with the association's established rules and procedures. The arbitration hearing shall be set within 45 days of the election to arbitrate, but in no event less than 28 days from the date of selection of an arbitrator. The arbitration hearing may be continued up to 15 additional days if necessary at the arbitrator's discretion. Except as otherwise specifically provided in this subdivision, the arbitration hearing shall be conducted in accordance with the American Arbitration Association's established rules and procedures.

(e) If an appeal is prosecuted under this section, including an appeal taken in accordance with subdivision (c) of Section 14123 of the Welfare and Institutions Code, the state department shall have the burden of establishing by a preponderance of the evidence that (1) the alleged violation did occur, (2) the

alleged violation met the criteria for the class of citation alleged, and (3) the assessed penalty was appropriate. The state department shall also have the burden of establishing by a preponderance of the evidence that the assessment of a civil penalty should be upheld. If a licensee fails to notify the director in writing that he or she intends to contest the citation, or the proposed assessment of a civil penalty therefor, or the decision made by the director's designee, after a citation review conference, within the time specified in this section, the decision by the director's designee after a citation review conference shall be deemed a final order of the state department and shall not be subject to further administrative review, except that the licensee may seek judicial relief from the time limits specified in this section. If a licensee appeals a contested citation or the assessment of a civil penalty, no civil penalty shall be due and payable unless and until the appeal is terminated in favor of the state department.

(f) The director or the director's designee shall establish an independent unit of trained citation review conference hearing officers within the state department to conduct citation review conferences. Citation review conference hearing officers shall be directly responsible to the deputy director for licensing and certification, and shall not be concurrently employed as supervisors, district administrators, or regional administrators with the licensing and certification division. Specific training shall be provided to members of this unit on conducting an informal conference, with emphasis on the regulatory and legal aspects of long-term health care.

Where the state department issues a citation as a result of a complaint or regular inspection visit, and a resident or residents are specifically identified in a citation by name as being specifically affected by the violation, then the following persons may attend the citation review conference:

(1) The complainant and his or her designated representative.

(2) A personal health care provider, designated by the resident.

(3) A personal attorney, only if the long-term health care facility has an attorney present.

(4) Any person representing the Office of the State Long-Term Care Ombudsman, as defined in subdivision (c) of Section 9701 of the Welfare and Institutions Code.

Where the state department determines that residents in the facility were threatened by the cited violation but does not name specific residents, any person representing the Office of the State Long-Term Care Ombudsman, as defined in subdivision (c) of Section 9701 of the Welfare and Institutions Code, and a representative of the residents or family council at the facility may participate to represent all residents. In this case, these representatives shall be the sole participants for the residents in the conference. The residents' council shall designate which representative will participate.

The complainant, affected resident, or their designated representatives shall be notified by the state department of the conference and their right to participate.

The director's designee shall notify the complainant or his or her designated representative and the affected resident or his or her designated representative, of his or her determination based on the citation review conference.

(g) In assessing the civil penalty for a violation, all relevant facts shall be considered, including, but not limited to, all of the following:

(1) The probability and severity of the risk which the violation presents to the patient's or resident's mental and physical condition.

(2) The patient's or resident's medical condition.

(3) The patient's or resident's mental condition and his or her history of mental disability.

(4) The good faith efforts exercised by the facility to prevent the violation from occurring.

(5) The licensee's history of compliance with regulations.

(h) Except as otherwise provided in this subdivision, an assessment of civil penalties for a class "A" or class "B" violation shall be trebled and collected for a second and subsequent violation for which a citation of the same class was issued within any 12-month period. Trebling shall occur only if the first citation issued within the 12-month period was issued in the same class, a civil penalty was assessed, and a plan of correction was submitted for the previous same-class violation occurring within the period, without regard to whether the action to enforce the previous citation has become final. However, the increment to the civil penalty required by this subdivision shall not be due and payable unless and until the previous action has terminated in favor of the state department.

If the class "B" citation is issued for a patient's rights violation, as defined in subdivision (d) of Section 1424, it shall not be trebled unless the state department determines the violation has a direct or immediate relationship to the health, safety, security, or welfare of long-term health care facility residents.

(i) The director shall prescribe procedures for the issuance of a notice of violation with respect to violations having only a minimal relationship to safety or health.

(j) Actions brought under this chapter shall be set for trial at the earliest possible date and shall take precedence on the court calendar over all other cases except matters to which equal or superior precedence is specifically granted by law. Times for responsive pleading and for hearing the proceeding shall be set by the judge of the court with the object of securing a decision as to subject matters at the earliest possible time.

(k) If the citation is dismissed, the state department shall take action immediately to ensure that the public records reflect in a prominent manner that the citation was dismissed.

(*l*) Penalties paid on violations under this chapter shall be applied against the state department's accounts to offset any costs incurred by the state pursuant to this chapter. Any costs or penalties assessed pursuant to this chapter shall be paid within 30 days of the date the decision becomes final. If a facility does not comply

with this requirement, the state department shall withhold any payment under the Medi-Cal program until the debt is satisfied. No payment shall be withheld if the state department determines that it would cause undue hardship to the facility or to patients or residents of the facility.

(m) The amendments made to subdivisions (a) and (c) of this section by Chapter 84 of the Statutes of 1988, to extend the number of days allowed for the provision of notification to the director, do not affect the right, that is also contained in those amendments, to request judicial relief from these time limits.

Health & Safety Code § 1704. Duties of Department of Health Services

1704. The department shall:

(a) Prescribe reasonable rules and regulations with respect to the administration of this chapter.

(b) Investigate violations of the provisions of this chapter, and report such violations to the appropriate enforcement authority.

(c) Secure the investigation and testing of the content, method of preparation, efficacy, or use of drugs, medicines, compounds, or devices proposed to be used, or used, by any individual, person, firm, association, or other entity in the state for the diagnosis, treatment, or cure of cancer, prescribe reasonable regulations with respect to such investigation and testing, and make findings of fact and recommendations upon completion of any such investigation and testing.

(d) Adopt a regulation prohibiting the prescription, administration, sale or other distribution of any drug, substance, or device found to be harmful or of no value in the diagnosis, prevention or treatment of cancer.

(e) Hold hearings in respect of those matters involving compliance with the provisions of this chapter and subpoena witnesses and documents. Any or all such hearings may be held before the Cancer Advisory Council. Any administrative action to be taken by the department as a result of such hearings shall be taken only after receipt of the recommendations of the council. Prior to issuance of a cease and desist order under Section 1711, a hearing shall be held. The person furnishing a sample under Section 1707 shall be given due notice of such hearing and an opportunity to be heard.

(f) Contract with independent scientific consultants for specialized services and advice.

In the exercise of the powers granted by this section, the department shall consult with the Cancer Advisory Council.

Health & Safety Code § 1720. Statute governing hearings

1720. All hearings authorized by this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 of the Government Code.

Health & Safety Code § 4027. Exemptions from maximum contaminant level or treatment technique requirement

4027. (a) The department may exempt any public water system from any maximum contaminant level or treatment technique requirement if it finds all the following:

(1) The public water system was in operation, or had applied for a permit to operate, on the effective date of the maximum contaminant level or treatment technique requirement.

(2) Due to compelling factors, which may include economic factors, the public water system is unable to comply with the maximum contaminant level or treatment technique requirement.

(3) The granting of the exemption will not result in an unreasonable risk to health.

(b) If the department grants a public water system an exemption for a primary drinking water standard under subdivision (a), the department shall prescribe, at the time an exemption is granted, a schedule for both of the following:

(1) Compliance by the public water system with each contaminant level or treatment technique requirement for which the exemption was granted.

(2) Implementation by the public water system of interim control measures the department may require for each contaminant or treatment technique requirement for which the exemption was granted.

(c) Any schedule prescribed by the department pursuant to this section shall require compliance by the public water system with each contaminant level or treatment technique requirement for which the exemption was granted within 12 months from the granting of the exemption.

(d) The final date for compliance with any schedule issued pursuant to this section may be extended by the department for a period not to exceed three years from the date of the granting of the exemption if the department finds all of the following:

(1) The system cannot meet the standard without capital improvements which cannot be completed within the period of the exemption.

(2) In the case of a system which needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain the financial assistance or the system has entered into an enforceable agreement to become part of a regional public water system.

(3) The system is taking all practicable steps to meet the standard.

(e) In the case of a system which does not serve more than 500 service connections and which needs financial assistance for the necessary improvements, an exemption granted pursuant to paragraph (2) of subdivision (d) may be renewed for one or more additional two-year periods if the system establishes that it is taking all practicable steps to meet the requirements of subdivision (d).

(f) Prior to the granting of an exemption pursuant to this section, the department shall provide notice and an opportunity for a public hearing. Notice of any public

hearing held pursuant to this section shall be given by the department in writing to the public water system seeking the exemption and to the public as provided in Section 6061 of the Government Code.

Health & Safety Code § 4027.6. Variances from primary drinking water standards

4027.6. (a) The department may grant a variance or variances from primary drinking water standards to a public water system. Any variance granted pursuant to this subdivision shall conform to the requirements established under the federal Safe Drinking Water Act, as amended (42 U.S.C. Sec. 300g-4).

(b)(1) In addition to the authority provided in subdivision (a), at the request of the Board of Directors of the Big Bear City Community Services District, or the Twenty-nine Palms Water District, or the Kinneola Irrigation District, or the Riverdale Public Utility District, the department shall grant a variance from the primary drinking water standard adopted by the department for fluoride. A variance granted by the department pursuant to this subdivision shall prohibit fluoride levels in excess of 75 percent of the maximum contaminant level established in the national primary drinking water regulation adopted by the United States Environmental Protection Agency for fluoride, or three milligrams per liter, whichever is higher, and shall be valid for a period of up to 30 years. The department shall review each variance granted pursuant to this section at least every five years. The variance may be withdrawn upon reasonable notice by the department if the department determines that the community served by the district no longer accepts the fluoride level authorized in the variance or the level of fluoride authorized by the variance poses an unreasonable risk to health. In no case may a variance be granted in excess of the United States Environmental Protection Agency maximum contaminant level.

(2) The department shall grant a variance pursuant to paragraph (1) only if it determines, after conducting a public hearing in the community served by the district, that there is no substantial community opposition to the variance and the variance does not pose an unreasonable risk to health. The district shall provide written notification, approved by the department, to all customers which shall contain at least the following information:

(A) The fact that a variance has been requested.

(B) The date, time and location of the public hearing that will be conducted by the department.

(C) The level of fluoride that will be allowed by the requested variance and how this level compares to the maximum contaminant levels prescribed by the state primary drinking water standard, the federal national primary drinking water regulation, and the federal national secondary drinking water regulation.

(D) A discussion of the types of health and dental problems that may occur when the fluoride concentration exceeds the maximum contaminant levels prescribed by the state standard and the federal regulations.

(3) If, at any time after a variance has been granted pursuant to paragraph (1), substantial community concerns arise concerning the level of fluoride present in the water supplied by the district, the district shall notify the department, conduct a public hearing on the concerns expressed by the community, determine the fluoride level that is acceptable to the community, and apply to the department for an amendment to the variance which reflects that determination.

Health & Safety Code § 25845. Hearing; application of Administrative Procedure Act

25845. (a) In any proceeding under this chapter for granting or amending any license, or for determining compliance with, or granting exceptions from, rules and regulations promulgated in accordance with this chapter, the department shall afford an opportunity for a hearing on the record upon the request of any person whose interest may be affected by the proceeding, and shall admit that person as a party to such proceeding.

(b) Proceedings for the suspension or revocation of licenses under this chapter shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted therein.

(c) The adoption, repeal, or amendment of rules and regulations pursuant to this chapter shall be accomplished in conformity with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Health & Safety Code § 25847. Judicial review of final orders

25847. Any final order entered in any proceeding under Sections 25845 and 25846 shall be subject to judicial review in the manner prescribed in Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code.

Health & Safety Code § 25850. Application for order enjoining violation

25850. Whenever, in the judgment of the department, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule, regulation or order issued thereunder, and at the request of the department, the Attorney General may make application to the superior court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the department that such person has engaged in or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

Health & Safety Code § 25893. Civil and criminal penalties; procedure

25893. (a) The department may impose a civil penalty payable to the department upon any person who violates any provision of this chapter or any regulation

adopted pursuant to this chapter in the amount of not more than five thousand dollars ($5,000) per day. Each day a violation continues shall be considered a separate violation.

(b) If, after examination of a possible violation and the facts surrounding that possible violation, the department concludes that a violation has occurred, the department may issue a complaint to the person charged with the violation. The complaint shall allege the acts or failures to act that constitute the basis for the violation and the amount of the penalty. The complaint shall be served by personal service or by certified mail and shall inform the person so served of the right to a hearing.

(c) Any person served with a complaint pursuant to subdivision (c) may, within 20 days after service of the complaint, request a hearing by filing with the department a notice of defense. A notice of defense is deemed to have been filed within the 20-day period if it is postmarked within the 20-day period. If a hearing is requested by the person, it shall be conducted within 90 days after the receipt by the department of the notice of defense. If no notice of defense is filed within 20 days after service of the complaint, the department shall issue an order setting the penalty as proposed in the complaint unless the department and the person have entered into a settlement agreement, in which case the department shall issue an order setting the penalty in the amount specified in the settlement agreement. When the person has not filed a notice of defense or where the department and the person have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

(d) Any hearing required under this section shall be conducted by a departmental hearing officer appointed by the director. The department shall adopt regulations establishing a hearing process to review complaints. Until the department adopts these regulations, all hearings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that hearings shall be conducted by a departmental hearing officer appointed by the director. The department shall have all the powers granted in that chapter.

(e) Orders setting civil penalties under this section shall become effective and final upon issuance thereof, and payment shall be made within 30 days of issuance. A copy of the order shall be served by personal service or by certified mail upon the person served with the complaint.

(f) Within 30 days after service of a copy of a decision issued by the director, any person so served may file with the superior court a petition for writ of mandate for review of the decision. Any person who fails to file the petition within this 30-day period may not challenge the reasonableness or validity of the decision or order of the director in any judicial proceeding brought to enforce the decision or order or for other remedies. Section 1094.5 of the Code of Civil Procedure shall govern any proceedings conducted pursuant to this subdivision. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the director if

the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to this division or the accrual of any penalties assessed pursuant to this section. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(g) The remedies under this section are in addition to, and do not supersede, or limit, any and all other remedies, civil or criminal.

(h) If the violation is committed after a previous imposition of a penalty under this section which has become final, or if the violation is committed with intent to mislead or defraud, or if the violation concerns tableware primarily used by children or marketed for children, the person shall be subject to imprisonment for not more than one year in the county jail or imprisonment in state prison, or a fine of not more than ten thousand dollars ($10,000), or both the imprisonment and fine.

Health & Safety Code § 26671. Proceedings following filing of application

26671. Within 180 days after the filing of an application provided for in Section 26670, or such additional period as shall be agreed upon by the department and the applicant, the department shall do either of the following:

(a) Approve the application, if it finds that none of the grounds for denying approval specified in Section 26670 apply.

(b) Give the applicant written notice for an opportunity for a hearing before the department on the question of whether such application is approvable. If the applicant elects to accept the opportunity for hearing by written request within 30 days after such notice, such hearing shall commence not more than 90 days after the expiration of such 30 days unless the department and the applicant otherwise agree. Any such hearing shall thereafter be conducted on an expedited basis and the department's order thereon shall be issued within 90 days after the date fixed by the department for filing final briefs.

Health & Safety Code § 26672. Disapproval of application

26672. The department shall issue an order refusing to approve an application if, after written notice to the applicant and after giving him an opportunity for a hearing, the department makes any of the following findings:

(a) That the reports of investigation, which are required to be submitted to the department pursuant to Section 26670, do not include adequate tests by all methods reasonably applicable to show whether or not such new drug or device is safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling and advertisement of the new drug or device.

(b) That the results of the tests submitted pursuant to Section 26670 to show whether or not such new drug or device is safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling and advertisement of the new drug or device show that the drug or device is unsafe for

use under such conditions or do not show that such new drug or device is safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling and advertisement.

(c) That the methods, facilities, and controls used in the manufacture, processing, or packing of the new drug or device are inadequate to preserve its identity, strength, quality, purity, composition, or other characteristics.

(d) That upon the basis of information submitted as part of the application, or upon the basis of any other information before it with respect to such new drug or device, that the department has insufficient information to determine whether such drug or device is safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling and advertisement.

(e) That evaluated on the basis of the information submitted as part of the application and any other information before it with respect to such new drug or device, that there is a lack of substantial evidence that the new drug or device will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling or advertisement of the new drug or device.

(f) That based on an evaluation by the department of all material facts, that the proposed labeling or advertising of the new drug or device is false or misleading in any particular.

Health & Safety Code § 26675. Withdrawal of approval of application

26675. The department shall issue an order withdrawing approval of an application concerning any new drug or device if, after giving written notice to the applicant and an opportunity for a hearing, the department makes any of the following findings:

(a) That clinical or other experience, tests, or other scientific data show that such new drug or device is unsafe for use under the conditions of use upon the basis of which the application was approved.

(b) That new evidence of clinical experience, not contained in such application or not available to the department until after such application was approved, or tests by new methods, or tests by methods not deemed reasonably applicable when such application was approved, evaluated together with the evidence available to the department when the application was approved, shows that such new drug or device is not shown to be safe for use under the conditions of use upon the basis of which the application was approved.

(c) On the basis of new information with respect to such new drug or device, evaluated together with the evidence available to the department when the application was approved, that there is a lack of substantial evidence that the new drug or device will have the effect it purports or is represented to have, under the conditions of use prescribed, recommended, or suggested in the labeling or advertising of the new drug or device.

(d) That the application contains any untrue statement of a material fact.

(e) That the applicant has failed to establish a system for maintaining required records, or has repeatedly or deliberately failed to maintain such records or to make required reports, or the applicant has refused to permit access to, or copying or verification of, such records.

(f) That on the basis of new information before the department, evaluated together with the evidence before it when the application was approved, the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of such new drug or device are inadequate to assure and preserve its identity, strength, quality, purity, composition, and characteristics as determined by qualified experts selected by the department, and were not made adequate within a reasonable time after receipt of written notice from the department specifying the matter complained of.

(g) That on the basis of new information before it, evaluated together with the evidence before it when the application was approved, the labeling or advertisment of such new drug or device, based on an evaluation of all material facts, is false or misleading in any particular and is not corrected within a reasonable time after receipt of written notice from the department specifying the matter complained of.

Health & Safety Code § 26691. Denial, suspension, or revocation

26691. Any violation of any provision of this division or any regulation adopted pursuant to this division shall be grounds for denying a license or for suspending or revoking a license. Proceedings for the denial, suspension, or revocation of a license shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted in that chapter.

Health & Safety Code § 28502. Closing of areas; notice; emergency action

28502. (a) The director may declare any area within the jurisdiction of this state to be a closed area if it is determined that shellfish taken from the growing area may be unsafe or unfit for human consumption.

(b) The director shall close to the taking of shellfish for a period deemed advisable any waters to which shellfish from a closed area may have been transferred.

(c) The director shall establish by order the areas which he or she declares unsafe or unfit for shellfish harvesting and shall modify or revoke the order in accordance with the results of chemical, toxicologic, and bacteriological surveys conducted by the department. The director shall file the order in the office of the department, and shall furnish copies of the orders describing closed areas to the Department of Fish and Game, the State Water Resources Control Board, and to any interested person without charge.

(d) Prior to the director's declaration that shellfish-growing waters may be unsafe and shellfish grown in these waters may not be taken for human consumption, the department shall do all of the following:

(1) Give at least 20 days' notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subject and issues involved, and the time when, the place where, and the manner in which, interested persons may present their views thereon.

(2) Afford all interested persons reasonable opportunity to submit data, views, or arguments orally or in writing. The department shall consider fully all written and oral submissions respecting the proposed action.

(e) If the department finds that the shellfish harvested from an area is unsafe or unfit for human consumption and states in writing its reasons for that finding, it may proceed without prior notice or hearing to take emergency action. The action may be effective for a period of not longer than 30 days, during which time the department shall initiate the procedures contained in subdivision (d).

Health & Safety Code § 28518.8. Administrative hearings

28518.8. (a) Except to the extent otherwise provided in Section 28502 and subdivision (e) of Section 28506, or when a violation is asserted pursuant to Section 28517, when the department asserts a violation of this chapter, all affected persons shall be afforded an opportunity for an administrative hearing after 20 days notice.

(b) The notice shall include all of the following:

(1) A statement of the time, place, and nature of the hearing.

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(3) A reference to the particular sections of the statutes, regulations, and rules involved.

(4) A short and plain statement of the matters asserted.

(c) Opportunity shall be afforded all persons to respond and present evidence on the issues involved.

(d) Hearings authorized or required by this chapter shall be conducted by the department or any agent as the department may designate for that purpose.

(e) Oral proceedings or any part thereof shall be transcribed at the request of any person. The person requesting the transcription shall bear the cost of the transcript.

(f) Final decisions or orders adverse to any person shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, which shall be separately stated. Persons shall be notified either personally or by mail of any decision or order.

Health & Safety Code § 28550. Civil penalties for violation of specific laws relating to food

28550. (a) If any person violates any provision of Chapter 3.5 (commencing with Section 27000), Chapter 5 (commencing with Section 28110), Chapter 5.5 (commencing with Section 28165), Chapter 7 (commencing with Section 28280), Chapter 8 (commencing with Section 28360), Chapter 10 (commencing with Section 28500), Chapter 12 (commencing with Section 28700), or Chapter 13

(commencing with Section 28740) of this division, or any regulation adopted pursuant to these chapters, the department may assess a civil penalty against that person as provided by this section.

(b) The penalty may be in an amount not to exceed one thousand dollars ($1,000) per day. Each day a violation continues shall be considered a separate violation.

(c) If, after examination of a possible violation and the facts surrounding that possible violation, the department concludes that a violation has occurred, the department may issue a complaint to the person charged with the violation. The complaint shall allege the acts or failures to act that constitute the basis for the violation and the amount of the penalty. The complaint shall be served by personal service or by certified mail and shall inform the person so served of the right to a hearing.

(d) Any person served with a complaint pursuant to subdivision (c) of this section may, within 20 days after service of the complaint, request a hearing by filing with the department a notice of defense. A notice of defense is deemed to have been filed within the 20-day period if it is postmarked within the 20-day period. If a hearing is requested by the person, it shall be conducted within 90 days after the receipt by the department of the notice of defense. If no notice of defense is filed within 20 days after service of the complaint, the department shall issue an order setting the penalty as proposed in the complaint unless the department and the person have entered into a settlement agreement, in which case the department shall issue an order setting the penalty in the amount specified in the settlement agreement. When the person has not filed a notice of defense or where the department and the person have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

(e) Any hearing required under this section shall be conducted by a departmental hearing officer appointed by the director. The department shall adopt regulations establishing a hearing process to review complaints. Until the department adopts these regulations, all hearings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that hearings shall be conducted by a departmental hearing officer appointed by the director. The department shall have all the powers granted in that chapter.

(f) Orders setting civil penalties under this section shall become effective and final upon issuance thereof, and payment shall be made within 30 days of issuance. A copy of the order shall be served by personal service or by certified mail upon the person served with the complaint.

(g) Within 30 days after service of a copy of a decision issued by the director, any person so served may file with the superior court a petition for writ of mandate for review of the decision. Any person who fails to file the petition within this 30-day period may not challenge the reasonableness or validity of the decision or order of the director in any judicial proceeding brought to enforce the decision or

order or for other remedies. Section 1094.5 of the Code of Civil Procedure shall govern any proceedings conducted pursuant to this subdivision. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the director if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to this division or the accrual of any penalties assessed pursuant to this section. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(h) The remedies under this section are in addition to, and do not supersede, or limit, any and all other remedies, civil or criminal.

Health & Safety Code § 38060. Conduct of hearing

38060. An administrative appeal process means a process established by a state agency or department which allows a nonprofit human service agency to seek review and resolution of some complaint about a specific action or inaction of a state agency.

The hearings held pursuant to this division shall be conducted using current procedures presently established by the office.

If the dispute is brought pursuant to subdivisions (d) through (g) of Section 38061 and it involves a sum of money more than ten thousand dollars ($10,000), the appeal authority, taking into account the cash flow problems of the parties, may require the party holding the disputed funds to place the amount under dispute in a special deposit fund to earn and be paid interest with such earnings to be distributed to the party who succeeds upon appeal. If the amount is less than ten thousand dollars ($10,000), it may be placed in such a special deposit fund with the approval of both parties.

The appeal process shall include flexibility to modify procedures to accommodate the particular needs of a given case.

The state's portion of the cost of the appeal process shall be borne by the state agency or department which shall not include internal operating expenses of the Office of Administrative Hearings.

Welf. & Inst. Code § 10950. Right of applicant or recipient to hearing

10950. If any applicant for or recipient of public social services is dissatisfied with any action of the county department relating to his or her application for or receipt of public social services, if his or her application is not acted upon with reasonable promptness, or if any person who desires to apply for public social services is refused the opportunity to submit a signed application therefor, and is dissatisfied with that refusal, he or she shall, in person or through an authorized representative, without the necessity of filing a claim with the board of supervisors, upon filing a request with the State Department of Social Services or the State Department of Health Services, whichever department administers the public social service, be accorded an opportunity for a state hearing.

Priority in setting and deciding cases shall be given in those cases in which aid is not being provided pending the outcome of the hearing. This priority shall not be construed to permit or excuse the failure to render decisions within the time allowed under federal and state law.

Notwithstanding any other provision of this code, there is no right to a state hearing when either (1) state or federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual request is incorrect grant computation, or (2) the sole issue is a federal or state law requiring an automatic change in services or medical assistance which adversely affects some or all recipients.

For the purposes of administering health care services and medical assistance, the State Director of Health Services shall have those powers and duties conferred on the Director of Social Services by this chapter to conduct state hearings in order to secure approval of a state plan under applicable federal law.

The State Director of Health Services may contract with the State Department of Social Services for the provisions of state hearings in accordance with this chapter.

As used in this chapter, "recipient" means an applicant for or recipient of public social services except aid exclusively financed by county funds or aid under Article 1 (commencing with Section 12000) to Article 6 (commencing with Section 12250), inclusive, of Chapter 3 of Part 3 , and under Article 8 (commencing with Section 12350) of Chapter 3 of Part 3, or those activities conducted under Chapter 6 (commencing with Section 18350) of Part 6.

Welf. & Inst. Code § 10951. Time for filing request

10951. No person shall be entitled to a hearing pursuant to this chapter unless he files his request for the same within 90 days after the order or action complained of.

Welf. & Inst. Code § 10952. Time for hearing; notice

10952. The department shall set the hearing to commence within 30 working days after the request is filed, and, at least 10 days prior to the hearing, shall give all parties concerned written notice of the time and place of the hearing.

Welf. & Inst. Code § 10952.5. Availability of public or private agency's position statement

10952.5. If regulations require a public or private agency to write a position statement concerning the issues in question in a fair hearing, or if the public or private agency chooses to develop such a statement, not less than two working days prior to the date of a hearing provided for pursuant to this chapter, the public or private agency shall make available to the applicant for, or recipient of, public social services requesting a fair hearing, a copy of the public or private agency's position statement on the forthcoming hearing. The public or private agency shall make the copy available to the applicant or recipient at the county welfare department. A public or private agency shall be required to comply with the

provisions of this section only if the public or private agency has received a 10-day prior notice of the date and time of the scheduled hearing.

If the public or private agency does not make the position statement available not less than two working days prior to the hearing or if the public or private agency decides to modify the position statement, the hearing shall be postponed upon the request of the applicant or recipient, provided an applicant or recipient agrees to waive the right to obtain a decision on the hearing within the deadline that would otherwise be applicable under regulations. A postponement for reason of the public or private agency not making the position statement available within not less than two working days shall be deemed a postponement for good cause for purposes of determining eligibility to any applicable benefits pending disposition of the hearing.

For purposes of this section "public or private agency" shall not include the State Department of Health Services.

Welf. & Inst. Code § 10953. Conduct of hearing

10953. A hearing under this chapter shall be conducted by administrative law judges employed by the department, unless the director orders that it shall be conducted by himself or herself. However, the director may contract with the Office of Administrative Hearings to conduct hearings.

Chapter 5 (commencing with Section 11500 of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any hearing conducted under this chapter.

Welf. & Inst. Code § 10953.5. Administrative law judges

10953.5. (a) The director has authority to appoint the department's administrative law judges as provided in Section 10555.

(b) Each administrative law judge shall have been admitted to practice law in this state and shall possess any other qualifications prescribed by the State Personnel Board. All persons in the office of the chief referee employed as hearing officers by the department prior to the effective date of this section shall be deemed to be administrative law judges.

Welf. & Inst. Code § 10954. Application of powers conferred on head of department

10954. The director or administrative law judge conducting the hearing, shall have all of the powers and authority conferred upon the head of a department in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

Welf. & Inst. Code § 10955. Informal hearing

10955. The hearing shall be conducted in an impartial and informal manner in order to encourage free and open discussion by participants. All testimony shall be submitted under oath or affirmation. The person conducting the hearing shall not be bound by rules of procedure or evidence applicable in judicial proceedings. At

the hearing the applicant or recipient may appear in person with counsel of his own choosing, or in person and without such counsel.

Welf. & Inst. Code § 10956. Report of proceedings

10956. The proceedings at the hearing shall be reported by a phonographic reporter or otherwise perpetuated by mechanical, electronic, or other means capable of reproduction or transcription.

Welf. & Inst. Code § 10957. Continuance of hearings; acceptance of application for aid

10957. The person conducting the hearing, upon good cause shown, may continue the hearing for a period of not to exceed 30 days. When the refusal of a county to accept a signed application for aid or services is an issue, the director may require the county to accept the application, and may continue the case until the results of the investigation have been reported to him or her. In any such case in which aid is awarded by the director or his or her designee, the payments shall commence at the time indicated by the director or his or her designee.

Welf. & Inst. Code § 10958. Proposed decision of administrative law judge

10958. If the hearing is conducted by an administrative law judge, he or she shall prepare a fair, impartial, and independent proposed decision, in writing and in such format that it may be adopted as the director's decision and, after approval of the decision by the chief administrative law judge of the department, the chief administrative law judge shall file a copy of the proposed decision, within 75 days after the conclusion of the hearing, with the director.

Welf. & Inst. Code § 10958.1. Issues at hearing

10958.1. The issues at the hearing shall be limited to those issues which are reasonably related to the request for hearing or other issues identified by either party which they have mutually agreed, prior to or at the hearing, to discuss. All of those issues shall be addressed in the hearing decisions.

Welf. & Inst. Code § 10959. Director's decision; service; further hearings

10959. Within 30 days after the department has received a copy of the administrative law judge's proposed decision, the director may adopt the decision in its entirety; decide the matter himself or herself on the record, including the transcript, with or without taking additional evidence; or order a further hearing to be conducted by himself or herself, or another administrative law judge on behalf of the director. Failure of the director to adopt the proposed decision, decide the matter himself or herself on the record, including the transcript, with or without taking additional evidence or order a further hearing within the 30 days shall be deemed an affirmation of the proposed decision. If the director decides the matter, a copy of his or her decision shall be served on the applicant or recipient and on the affected county, and, if his or her decision differs materially from the proposed decision of the administrative law judge, a copy of that proposed decision shall

also be served on the applicant or recipient and on the affected county. If a further hearing is ordered, it shall be conducted in the same manner and within the same time limits specified for the original hearing.

Welf. & Inst. Code § 10960. Request for rehearing

10960. Within 30 days after receiving the proposed decision of an administrative law judge adopted by the director, a final decision rendered by an administrative law judge or a decision issued by the director himself or herself, the affected county or applicant or recipient may file a request with the director for a rehearing. The director shall immediately serve a copy of the request on the other party to the hearing and such other party may within five days of the service file with the director a written statement supporting or objecting to the request. The director shall grant or deny the request no earlier than the fifth nor later than the 15th working day after the receipt of the request. If the director grants the request, the rehearing shall be conducted in the same manner and subject to the same time limits as the original hearing. If action is not taken by the director within the time allowed, the request shall be deemed denied.

Welf. & Inst. Code § 10961. Specification of award; payment

10961. The decision of the director need not specify the amount of the award to be paid unless the amount of the award is an issue. If the decision is in favor of the applicant or recipient, the county department shall pay to the applicant or recipient, without the necessity of establishing his or her present need, the amount of aid the director finds he or she is entitled to receive pursuant to the director's decision, payment to commence as of the date the person was first entitled thereto, or grant to him or her the services to which he or she is entitled.

The award shall be determined no later than 30 days following the date that the hearing decision is received by the county, or 30 days from the date the additional information needed for compliance with the decision is provided to the county. After the award is made, the county and the claimant shall be notified by the department of its determination regarding the county's compliance with the decision.

Welf. & Inst. Code § 10962. Judicial review

10962. The applicant or recipient or the affected county, within one year after receiving notice of the director's final decision, may file a petition with the superior court, under the provisions of Section 1094.5 of the Code of Civil Procedure, praying for a review of the entire proceedings in the matter, upon questions of law involved in the case. Such review, if granted, shall be the exclusive remedy available to the applicant or recipient or county for review of the director's decision. The director shall be the sole respondent in such proceedings. Immediately upon being served the director shall serve a copy of the petition on

the other party entitled to judicial review and such party shall have the right to intervene in the proceedings.

No filing fee shall be required for the filing of a petition pursuant to this section. Any such petition to the superior court shall be entitled to a preference in setting a date for hearing on the petition. No bond shall be required in the case of any petition for review, nor in any appeal therefrom. The applicant or recipient shall be entitled to reasonable attorney's fees and costs, if he obtains a decision in his favor.

Welf. & Inst. Code § 10963. Compliance with, and execution of, director's decision

10963. The county director shall comply with and execute every decision of the director rendered pursuant to this chapter.

Welf. & Inst. Code § 10964. Digest of decisions

10964. The department shall compile and distribute to each county department a current digest of decisions, properly indexed, rendered under this chapter, and each such digest shall be open to public inspection, subject, however, to the confidentiality requirements set forth in federal and state laws and regulations.

Welf. & Inst. Code § 10965. Request for hearing by legal representative or heir

10965. Nothing in this chapter shall prevent the filing of the request for a hearing by the legal representative, or, if there is no authorized legal representative, by an heir of a deceased applicant or recipient, in behalf of the decedent's estate, to the end that rights not determined at the time of death shall accrue to the estate of the applicant or recipient.

Welf. & Inst. Code § 10966. Delegation of authority to adopt final decisions

10966. (a) In addition to any other delegation powers granted to the director under law, the director may delegate his or her powers to adopt final decisions under this chapter to all administrative law judges within specified ranges in the department, in the types of cases deemed appropriate by the director. The authority to adopt final decisions shall not be contingent upon the outcome of the judge's resolution of the case or issue, nor upon the identity of a particular administrative law judge. The defined areas of delegation shall be published by the department after interested groups such as the Coalition of California Welfare Rights Organizations, legal aid societies, and the County Welfare Directors Association have had a reasonable amount of time to review and comment.

(b) Notwithstanding any other provisions of this chapter, decisions rendered by the administrative law judges under the authority of this section shall be treated, for all purposes, as the decision of the director. The affected county, recipient, or applicant has the right to request a rehearing pursuant to Section 10960, and the right to petition for judicial review pursuant to Section 10962.

(c) If the director chooses to exercise the authority to delegate his or her powers to adopt final decisions to administrative law judges, the delegation shall be in writing. Any such delegation instrument shall be a public record available at all times, including the time of hearing, from each administrative law judge to whom that authority has been delegated. The written delegation instrument shall include paragraphs (1) and (2) of the following, and may include paragraph (3) of the following:

(1) It shall specify the administrative law judges that are authorized to render final decisions on his or her behalf, including the effective date of the authorization.

(2) It shall specify the types of cases or issues that are subject to his or her delegation of final authority.

(3) It may include any other implementation instructions which he or she determines are necessary for the effective implementation of this section.

(d) Decisions rendered by administrative law judges pursuant to the provisions of this section shall be fair, impartial, independent, in writing, and in the format prescribed by the Chief Administrative Law Judge.

Welf. & Inst. Code § 10967. Adequacy of county's notice of action as issue

10967. At the time of the hearing the recipient has a right to raise the adequacy of the county's notice of action as an issue. If the administrative law judge determines that adequate notice was provided, the recipient shall agree to discuss the substantive issue or issues or the case shall be dismissed. If the administrative law judge determines that adequate notice was not provided, the case will be postponed unless the recipient waives the adequate notice requirement and agrees to discuss the substantive issue or issues at the hearing. If the notice was not adequate and involved termination or reduction of aid, retroactive action shall be taken by the county to reinstate aid pending.

Welf. & Inst. Code § 14087.27. Judicial review; alternative of administrative review

14087.27. (a) Notwithstanding any other provision of law, judicial review pursuant to Section 1085 of the Code of Civil Procedure, shall be available to resolve disputes relating to the terms, performance, or termination of contracts entered into pursuant to this article, or any act, failure to act, conduct, order, or decision of the special hospital negotiator or the commission which violate the provisions of this article.

(b) Subdivision (a) shall not apply to recoupment efforts based on an audit or review of hospital performance of the terms and conditions of the negotiated contract. These recoupment efforts shall be reviewable pursuant to Section 14171.

(c) As an alternative for a contract hospital, to the remedy provided in subdivision (a), contracts entered into pursuant to this article shall provide for administrative review of disputes relating to performance under the contracts. The proceedings for review of the disputes shall be conducted by an independent

hearing examiner who shall render a proposed decision. The final decision shall be rendered by the director.

(d) Venue for judicial review pursuant to this section shall lie only in counties in which the Attorney General maintains an office.

Welf. & Inst. Code § 14105.38. (Operative until January 1, 1997) Hearing regarding deletion of drug from list of contract drugs

14105.38. (a)(1) In the event the department determines a drug should be deleted from the list of contract drugs, the department shall conduct a public hearing, as provided in this section, to receive comment on the impact of removing the drug.

(2)(A) The department shall provide written notice 30 days prior to the hearing.

(B) The department shall send the notice required by this subdivision to the manufacturer of the drug proposed to be deleted and to organizations representing Medi-Cal beneficiaries.

(b)(1) The hearing panel shall consist of the Chief, Medi-Cal Drug Discount Program, who shall serve as chair, and the Medi-Cal Contract Drug Advisory Committee.

(2) The hearing shall be recorded and transcribed, and the transcript available for public review.

(3) Subsequent to hearing all public comment, and within 30 days of the hearing, each panel member shall submit a recommendation regarding deletion of the drug and the reason for the recommendation to the director.

(c) The director shall consider public comments provided at the hearing and the recommendations of each panel member in determining whether to delete the drug.

(d) This section shall remain in effect only until January 1, 1997 , and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997 , deletes or extends that date.

Welf. & Inst. Code § 14105.98. Medi-Cal payment adjustment amounts to hospitals

14105.98. (a) The following definitions shall apply for purposes of this section:

(1) "Disproportionate share list" means an annual list of disproportionate share hospitals that provide acute inpatient services issued by the department for purposes of this section.

(2) "Fund" means the Medi-Cal Inpatient Payment Adjustment Fund, created pursuant to Section 14163.

(3) "Eligible hospital" means a hospital included on a disproportionate share list, which is eligible to receive payment adjustments under this section during a particular state fiscal year.

(4) "Hospital" means a health facility that is licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code to provide acute inpatient hospital services, and includes all components of the facility.

(5) "Payment adjustment" or "payment adjustment amount" means an amount paid under this section for acute inpatient hospital services provided by a disproportionate share hospital.

(6) "Payment adjustment year" means the particular state fiscal year with respect to which payments are to be made to eligible hospitals under this section.

(7) "Payment adjustment program" means the system of Medi-Cal payment adjustments for acute inpatient hospital services established by this section.

(8) "Annualized Medi-Cal inpatient paid days" means the total number of Medi-Cal acute inpatient hospital days, regardless of dates of service, for which payment was made by or on behalf of the department to a hospital, under present or previous ownership, during the most recent calendar year ending prior to the beginning of a particular payment adjustment year, including all Medi-Cal acute inpatient covered days of care for hospitals which are paid on a different basis than per diem payments.

(9) "Low-income utilization rate" means a percentage rate determined by the department in accordance with the requirements of Section 1396r-4 (b) (3) of Title 42 of the United States Code, and included on a disproportionate share list.

(10) "Low-income number" means a hospital's low-income utilization rate rounded down to the nearest whole number, and included on a disproportionate share list.

(11) "1991 Peer Grouping Report" means the final report issued by the department dated May 1991, entitled "Hospital Peer Grouping."

(12) "Major teaching hospital" means a hospital that meets the definition of a university teaching hospital, major nonuniversity teaching hospital, or large teaching emphasis hospital as set forth on page 51 of the 1991 Peer Grouping Report.

(13) "Children's hospital" means a hospital that meets the definition of a children's hospital-state defined, as set forth on page 53 of the 1991 Peer Grouping Report, or which is listed in subdivision (a), or subdivisions (c) to (g), inclusive, of Section 16996.

(14) "Acute psychiatric hospital" means a hospital that meets the definition of an acute psychiatric hospital, a combination psychiatric/alcohol-drug rehabilitation hospital, or a psychiatric health facility, to the extent the facility is licensed to provide acute inpatient hospital service, as set forth on page 52 of the 1991 Peer Grouping Report.

(15) "Alcohol-drug rehabilitation hospital" means a hospital that meets the definition of an alcohol-drug rehabilitation hospital as set forth on page 52 of the 1991 Peer Grouping Report.

(16) "Emergency services hospital" means a hospital that is a licensed provider of basic emergency services as described in Sections 70411 to 70419, inclusive, of Title 22 of the California Code of Regulations, or that is a licensed provider of comprehensive emergency medical services as described in Sections 70451 to 70459, inclusive, of Title 22 of the California Code of Regulations.

(17) "Medi-Cal day of acute inpatient hospital service" means any acute inpatient day of service attributable to patients who, for those days, were eligible for medical assistance under the California state plan, including any day of service that is reimbursed on a basis other than per diem payments.

(b) For each fiscal year commencing with 1991-92, there shall be Medi-Cal payment adjustment amounts paid to hospitals pursuant to this section. The amount of payments made and the eligible hospitals for each payment adjustment year shall be determined in accordance with the provisions of this section. The payments are intended to support health care services rendered by disproportionate share hospitals.

(c) For each fiscal year commencing with 1991-92, the department shall issue a disproportionate share list. The list shall be developed in accordance with subdivisions (e) and (f), and shall serve as a basis for payments under this section for the particular payment adjustment year. In developing the list, the department may, to the extent practicable, utilize applicable data which is consistent with analysis compiled or developed by the California Medical Assistance Commission.

(d)(1) Except as otherwise provided by this section, the payment adjustment amounts under this section shall be distributed as a supplement to, and concurrent with, payments on all billings for Medi-Cal acute inpatient hospital services that are paid through Medi-Cal claims payment systems on or after July 1, 1991. In connection with those billings, the department shall pay payment adjustment amounts in accordance with subdivision (g), (h), (i), or (j), as applicable, to any hospital qualifying under subdivision (e). In addition, the department shall pay to each of those hospitals any supplemental lump-sum payment adjustment amount payable under subdivision (u). The nonfederal share of all payment adjustment amounts shall be funded by amounts from the fund. The department shall obtain federal matching funds for the payment adjustment program through customary Medi-Cal accounting procedures.

(2) As a limitation to paragraph (1), all payment adjustment amounts under this section, which are due with respect to billings paid through Medi-Cal claims payment systems on or after July 1, 1991, shall be suspended until the time federal approval is first obtained for the payment adjustment program as part of the Medi-Cal program. For purposes of this paragraph , federal approval requires both (i) approval by appropriate federal agencies of an amendment to the Medi-Cal State Plan, as referred to in subdivision (o), and (ii) confirmation by appropriate federal agencies regarding the availability of federal financial participation for the payment adjustment program at a level of at least 40 percent of the percentage of federal financial participation that is normally applicable for Medi-Cal expenditures for acute inpatient hospital services. At the time federal approval is first obtained, the department shall proceed pursuant to subparagraphs (A) and (B) in connection with the suspended payment adjustment amounts.

(A) Except as provided by subdivision (l), or by any other subdivision of this section, any payment adjustment amounts which were suspended shall, within 60 days, be paid for all those billings paid through Medi-Cal claims payment systems during periods of time, on or after July 1, 1991, for which federal approval is first effective for the payment adjustment program.

(B) Payment adjustment amounts shall not be paid in connection with any Medi-Cal billings which were paid through Medi-Cal claims payment systems during any period of time for which federal approval is not effective for the payment adjustment program.

(3) As a limitation to paragraph (1), the amendments to this section enacted during calendar year 1993 shall not be implemented until the department has obtained any approvals that are necessary under federal law. Until such time as all necessary federal approvals are obtained, the payment adjustment program shall continue as though no amendments had been enacted during calendar year 1993. At such time as all necessary federal approvals have been obtained, the amendments enacted during calendar year 1993, shall be implemented effective as of the earliest effective date permissible under federal law.

(e) To qualify for payment adjustment amounts under this section, a hospital shall have been included on the disproportionate share list for the particular payment adjustment year. The list shall consist of those hospitals which satisfy both of the following requirements:

(1) The hospital shall meet the federal requirements for disproportionate share status set forth in subsection (d) of Section 1396r-4 of Title 42 of the United States Code.

(2) Either of the following shall apply:

(A) The hospital's medicaid inpatient utilization rate, as defined in Section 1396r-4 (b) (2) of Title 42 of the United States Code, shall be at least one standard deviation above the mean medicaid inpatient utilization rate for hospitals receiving medicaid payments in the state.

(B) The hospital's low-income utilization rate shall exceed 25 percent.

(f)(1) For the 1991-92 payment adjustment year, a disproportionate share list shall be issued by the department no later than 65 days after the enactment of this section. For subsequent payment adjustment years, a tentative listing shall be prepared by the department at least 60 days before the beginning of the particular payment adjustment year, and a disproportionate share list shall be issued no later than five days after the beginning of the particular payment adjustment year. All state agencies shall take all necessary steps to supply the most recent data available to the department to meet these deadlines. The Office of Statewide Health Planning and Development shall provide to the department, no later than March 1 of each year, the data specified by the department, as the data existed on the statewide data base file as of February 1 of each year (except that for the 1991-92 payment adjustment year, the Office of Statewide Health Planning and

Development shall provide data as it existed on the statewide data base file as of August 30, 1991), from all of the following:

(A) Hospital annual disclosure reports, filed with the Office of Statewide Health Planning and Development pursuant to Section 443.31 of the Health and Safety Code, for hospital fiscal years which ended during the calendar year ending 13 months prior to the applicable February 1.

(B) Annual reports of hospitals, filed with the Office of Statewide Health Planning and Development pursuant to Section 439.2 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(C) Hospital patient discharge data reports, filed with the Office of Statewide Health Planning and Development pursuant to subdivision (g) of Section 443.31 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(D) Any other materials on file with the Office of Statewide Health Planning and Development.

(2) The disproportionate share list shall show all of the following:

(A) The name of the hospital.

(B) Based on the most recent annual data available, as it existed on the Office of Statewide Health Planning and Development statewide data base file as of February 1 of each year, and August 30 for the 1991-92 payment adjustment year, and expressed as a percentage, the hospital's Medi-Cal utilization rate and low-income utilization rate as referred to in paragraph (2) of subdivision (e). The department shall determine these rates in accordance with paragraph (4).

(C) Based on the hospital's low-income utilization rate, the hospital's low-income number.

(3) The department shall determine a hospital's satisfaction of paragraph (1) of subdivision (e) based on the most recent annual data available, as it existed on the Office of Statewide Health Planning and Development statewide data base file as of February 1 of each year, and August 30 for the 1991-92 payment adjustment year, whether the data relates to operations under present or previous ownership.

(4) To determine a hospital's Medi-Cal inpatient utilization rate and low-income utilization rate for purposes of disproportionate share lists, the department shall utilize the same methodology, formulae, and data sources as set forth in connection with interim determinations in Attachment 4.19-A of the Medi-Cal State Plan (effective on or about July 1, 1990), except that the following shall apply:

(A) The calculations shall not be interim, but shall be final for purposes of this section.

(B) To the extent permitted by federal law, the payment adjustment amounts provided to hospitals pursuant to this section shall not be included for any purpose in the calculations and determinations made pursuant to this section.

(C) Any other variation otherwise required by this section or by federal law.

(D) The data utilized by the department shall relate to the hospital under present and previous ownership. When there has been a change of ownership, a change in the location of the main hospital facility, or a material change in patient admission patterns during the twenty-four months immediately prior to the payment adjustment year, and the change has resulted in a diminution of access for Medi-Cal inpatients at the hospital, all as determined by the department, the department shall, to the extent permitted by federal law, utilize current data that are reflective of the diminution of access, even if the data are not annual data.

(5) For purposes of payment adjustment amounts under this section, each disproportionate share list shall be considered complete when issued by the department pursuant to paragraph (1). Nothing on a disproportionate share list, once issued by the department, shall be modified for any reason, other than mathematical or typographical errors or omissions on the part of the department or the Office of Statewide Health Planning and Development in preparation of the list.

(g) For each Medi-Cal day of acute inpatient hospital service paid by or on behalf of the department during a payment adjustment year, regardless of dates of service, to a hospital on the applicable disproportionate share list, where that hospital, on the first day of the payment adjustment year, is a major teaching hospital, the hospital shall be paid the sum of all of the following amounts, except as limited by other applicable provisions of this section:

(1) A minimum payment adjustment of three hundred dollars ($300).

(2) The sum of the following amounts, minus three hundred dollars ($300):

(A) A ninety dollar ($90) payment adjustment for each percentage point, from 25 percent to 29 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(B) A seventy dollar ($70) payment adjustment for each percentage point, from 30 percent to 34 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(C) A fifty dollar ($50) payment adjustment for each percentage point, from 35 percent to 44 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(D) A thirty dollar ($30) payment adjustment for each percentage point, from 45 percent to 64 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(E) A ten dollar ($10) payment adjustment for each percentage point, from 65 percent to 80 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(3) If the sum calculated under paragraph (2) is less than zero, it shall be disregarded for payment purposes.

(h) For each Medi-Cal day of acute inpatient hospital service paid by or on behalf of the department during a payment adjustment year, regardless of dates of service, to a hospital on the applicable disproportionate share list, where that

hospital, on the first day of the payment adjustment year, is a children's hospital, the hospital shall be paid the sum of four hundred fifty dollars ($450), except as limited by other applicable provisions of this section.

(i) For each Medi-Cal day of acute inpatient hospital service paid by or on behalf of the department during a payment adjustment year, regardless of dates of service, to a hospital on the applicable disproportionate share list, where that hospital, on the first day of the payment adjustment year, is an acute psychiatric hospital or an alcohol-drug rehabilitation hospital, the hospital shall be paid the sum of all of the following amounts, except as limited by other applicable provisions of this section:

(1) A minimum payment adjustment of fifty dollars ($50).

(2) The sum of the following amounts, minus fifty dollars ($50):

(A) A ten dollar ($10) payment adjustment for each percentage point, from 25 to 29 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(B) A seven dollar ($7) payment adjustment for each percentage point, from 30 to 34 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(C) A five dollar ($5) payment adjustment for each percentage point, from 35 to 44 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(D) A two dollar ($2) payment adjustment for each percentage point, from 45 to 64 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(E) A one dollar ($1) payment adjustment for each percentage point, from 65 to 80 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(3) If the sum calculated under paragraph (2) is less than zero, it shall be disregarded for payment purposes.

(j) For each Medi-Cal day of acute inpatient hospital service paid by or on behalf of the department during a payment adjustment year, regardless of dates of service, to a hospital on the applicable disproportionate share list, where that hospital does not meet the criteria for receiving payments under subdivision (g), (h), or (i) above, the hospital shall be paid the sum of all of the following amounts, except as limited by other applicable provisions of this section:

(1) A minimum payment adjustment of one hundred dollars ($100).

(2) If the hospital is an emergency services hospital at the time the payment adjustment is paid, a two hundred dollar ($200) payment adjustment.

(3) The sum of the following amounts minus one hundred dollars ($100), and minus an additional two hundred dollars ($200) if the hospital is an emergency services hospital at the time the payment adjustment is paid:

(A) A forty dollar ($40) payment adjustment for each percentage point, from 25 percent to 29 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(B) A thirty-five dollar ($35) payment adjustment for each percentage point, from 30 percent to 34 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(C) A thirty dollar ($30) payment adjustment for each percentage point, from 35 percent to 44 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(D) A twenty dollar ($20) payment adjustment for each percentage point, from 45 percent to 64 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(E) A fifteen dollar ($15) payment adjustment for each percentage point, from 65 percent to 80 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(4) If the sum calculated under paragraph (3) is less than zero, it shall be disregarded for payment purposes.

(k) (1) For any particular payment adjustment year, no hospital may qualify for payments under more than one subdivision among subdivisions (g), (h), (i), and (j). If any hospital qualifies under more than one subdivision, the department shall determine which subdivision shall apply for payments.

(2) For each payment adjustment year beginning with 1992-93, the total applicable per diem payment adjustment amount calculated for each eligible hospital pursuant to subdivision (g), (h), (i), or (j) shall be adjusted by a percentage identical to the percentage increase in transfer amounts that the department has authorized for use pursuant to paragraph (1) of subdivision (h) of Section 14163 for the particular fiscal year.

(3) If an eligible hospital ordinarily is paid by or on behalf of the department for Medi-Cal acute inpatient hospital services based on a payment methodology other than per diem payments, the eligible hospital shall receive payment adjustment amounts under subdivision (g), (h), (i), or (j) of this section based on its approved Medi-Cal days of acute inpatient hospital care, in the same fashion as all other eligible hospitals under this section.

(*l*)(1)(A) In determining Medi-Cal days of service for purposes of payment adjustments under this section, the department shall recognize all acute inpatient hospital days of service required to be taken into account under federal law.

(B) For the 199293 payment year, the department may consider the Medi-Cal days of service provided by the qualifying hospitals for Medi-Cal patients covered by the prepaid health plans contracting directly with the Medi-Cal program in achieving their maximum payments.

(C) For 1993-94 and subsequent payment years, the department may consider the Medi-Cal days of service provided by hospitals for Medi-Cal patients covered by the prepaid health plans contracting directly with the Medi-Cal program in

determining the Medi-Cal utilization rate and the maximum days of payment. Additionally, the department may consider the days of service provided by the qualifying hospitals for Medi-Cal patients covered by the prepaid health plans contracting directly with the Medi-Cal program in achieving their maximum payments in those payment years.

(2) Notwithstanding paragraph (1), there shall be, for each eligible hospital, a maximum limit on the number of Medi-Cal acute inpatient hospital days for which payment adjustment amounts may be paid under this section with respect to each payment adjustment year. The maximum limit shall be that number of days that equals 80 percent of the eligible hospital's annualized Medi-Cal inpatient paid days, as determined from all Medi-Cal paid claims records available through April 1 preceding the beginning of the payment adjustment year.

(m) No payment rate for any service rendered by any hospital under the Medi-Cal selective provider contracting program shall be reduced as a result of this section.

(n) Notwithstanding any other provision of law, to the extent consistent with federal law , and except as provided by this section, no maximum payment limit shall be placed on the amount of Medi-Cal payment adjustments which may be made to disproportionate share hospitals. The payments made to disproportionate share hospitals pursuant to this section and Section 14105.99 shall not cause any other amounts paid or payable to a hospital to be deemed in excess of any applicable maximum payment limit.

(o) The department shall promptly seek any necessary federal approvals in order to implement this section , including any amendments . Pursuant to Section 1396r-4 of Title 42 of the United States Code, and related federal medicaid statutes and regulations, payment adjustment systems for inpatient hospital services rendered by disproportionate share hospitals shall be included in a state's medicaid plan. Therefore, the department shall, prior to the end of the calendar quarter during which this section is enacted or amended , submit for federal approval an amendment to the Medi-Cal State Plan in connection with the payment adjustment program.

(p) If, for any payment adjustment year, the amounts in the fund, when matched by federal funds pursuant to customary Medi-Cal accounting procedures, are insufficient to pay some or all of the payment adjustment amounts otherwise due under this section, payment adjustment amounts shall be reduced in accordance with the following paragraphs to resolve the insufficiency.

(1) All payment adjustment amounts for the entire payment adjustment year shall be reduced proportionately not to exceed 2 percent of the total payment adjustment amounts which otherwise would have been paid for the entire payment adjustment year.

(2) If the payment reductions authorized by paragraph (1) do not resolve the insufficiency for the payment adjustment year, then, to the extent permitted by federal law, the following shall apply:

(A) The payment adjustment amounts, as reduced by paragraph 1, shall remain in effect for each eligible hospital whose low-income number is 30 percent or more.

(B) The payment adjustment amounts, as reduced by paragraph (1), for all other eligible hospitals shall be further reduced proportionately to resolve the insufficiency, but in no event to a level which would result in total payments to the eligible hospital in an amount less than 65 percent of the total payment adjustment amounts which would have been payable to the eligible hospital for the entire payment adjustment year had no reductions taken place.

(3) If the steps set forth in paragraph (2) are not permissible under federal law, or are not adequate to resolve the insufficiency, the payments to all eligible hospitals for the entire payment adjustment year shall be further reduced proportionately to resolve the insufficiency, but in no event to a level which would result in total payments to the eligible hospital in an amount less than 65 percent of the total payment adjustment amounts which would have been payable to the eligible hospital for the entire payment adjustment year had no reductions taken place.

(4) At such time as all eligible hospitals have been reduced to the 65 percent payment level set forth in paragraphs (2) and (3), the payments to all eligible hospitals for the payment adjustment year shall be further reduced proportionately to resolve any remaining insufficiency.

(q) (1) If it is necessary to apply the provisions of paragraph (3) of subdivision (p) at any time, the department shall, as soon as practicable, evaluate why the insufficiency arose and identify the projected occurrence and duration of any future insufficiencies.

(2) If the department determines as a result of the evaluations under paragraph (1) that (A) implementation of paragraph (3) of subdivision (p) will likely be necessary to resolve additional insufficiencies for the current payment adjustment year or the next payment adjustment year; and (B) that the level of federal financial participation realized by the payment adjustment program, for the current payment adjustment year as a whole, will be less than 30 percent of the percentage of federal financial participation that normally is applicable for Medi-Cal expenditures for acute inpatient hospital services, and that the level of federal financial participation for the payment adjustment program is expected to continue to remain below that 30 percent level for the next payment adjustment year as a whole, the department shall, as soon as practicable, implement paragraphs (3) and (4).

(3) If the department determines that the circumstances described in paragraph (2) are present, the payment adjustment program shall be terminated, effective as of the earliest date permissible under federal law. In that event, all installment payments to the fund which are already due pursuant to Section 14163 at the time of the department's determination shall remain due, and shall be collected by the Controller. However, installment payments which are not yet due at that time shall not become due.

(4) Within 90 days after the termination of the payment adjustment program, as referred to in paragraph (3), or as soon as practicable, the department shall determine whether any amounts remain in the fund which are not needed to pay prior payment adjustment amounts under this section. If remaining amounts exist in the fund, they shall be refunded to transferor entities on a pro rata basis, within 45 days after the date of the department's determination.

(r) The state shall be held harmless from any federal disallowance resulting from payments made under this section, and from payments made to hospitals based on transfers accepted by the department under Section 14164. Any hospital that has received payments under this section, or based on transfers accepted by the department under Section 14164 shall be liable for any audit exception or federal disallowance only with respect to the payments made to that hospital. The department shall recoup from a hospital the amount of any audit exception or federal disallowance in the manner authorized by applicable laws and regulations.

(s)(1) The department may utilize existing administrative appeal procedures for purposes of any appealable matter that arises under the payment adjustment program. The matters that may be appealed shall be limited to those related to the following:

(A) Paragraph (5) of subdivision (f).

(B) State audit disallowances of amounts paid to hospitals under the payment adjustment program.

(2) Calculations which are final pursuant to paragraph (4) or (5) of subdivision (f) or the procedures or data on which those calculations are based, shall not be appealed.

(t)(1) Except as provided in paragraph (2), the department shall take all appropriate steps permitted by law and the Medi-Cal State Plan to ensure the following for all years of the payment adjustment program:

(A) That well baby (nursery) days and acute administrative days are included in the payment adjustment program in the same fashion as all other Medi-Cal days of acute inpatient hospital service.

(B) That, to the same extent as any other Medi-Cal days of acute inpatient hospital service, well baby (nursery) days and acute administrative days are included as payable days under the payment adjustment program and in the total of annualized Medi-Cal inpatient paid days.

(C) That, if pursuant to paragraph (2), any well baby (nursery) days or acute administrative days are not included in the payment adjustment program for payment purposes for any parts of the 1992-93 or 1993-94 payment adjustment years, all such days are nevertheless included in the total of annualized Medi-Cal inpatient paid days for all purposes under the payment adjustment program, unless otherwise barred by paragraph (2).

(2) In no event shall paragraph (1) be implemented in a fashion that is inconsistent with federal medicaid law or the Medi-Cal State Plan.

(u) (1) For the 1993-94 payment adjustment year, each eligible hospital shall also be eligible to receive a supplemental lump-sum payment adjustment, which shall be payable as a result of the hospital being included on the disproportionate share list as of September 30, 1993. For purposes of federal medicaid rules, including Section 447.297 (d) of Title 42 of the Code of Federal Regulations, the supplemental payment adjustments shall be applicable to the federal fiscal year that ends on September 30, 1993.

(2) The availability of supplemental payment adjustments under this subdivision shall be determined as follows:

(A) The final maximum state disproportionate share hospital allotment for California under the provisions of applicable federal medicaid rules shall be identified for the 1993 federal fiscal year. This final allotment is two billion one hundred ninety-one million four hundred fifty-one thousand dollars ($2,191,451,000), as specified at page 43186 of Volume 58 of the Federal Register.

(B) The total amount of all per diem payment adjustment amounts under this section, whether paid or payable, that are applicable to the 1993 federal fiscal year shall be determined. The applicability of the per diem payment adjustment amounts to the 1993 federal fiscal year shall be determined in accordance with federal medicaid rules, including Sections 447.297 (d) (3) and 447.298 of Title 42 of the Code of Federal Regulations.

(C) The figure determined under subparagraph (B) shall be subtracted from the figure identified under subparagraph (A). If the remainder is a positive figure, supplemental lump-sum payment adjustments shall be made under this subdivision in accordance with paragraph (3).

(3) The amount of the supplemental lump-sum payment adjustment to each eligible hospital shall be computed as follows:

(A) The projected total of all per diem payment adjustment amounts payable to each particular eligible hospital under this section for the 1993-94 payment adjustment year shall be determined. For each hospital, this figure shall be identical to the figure used for the same hospital in the calculations regarding transfer amounts under subdivision (h) of Section 14163 for the 1993-94 state fiscal year.

(B) The projected totals for all eligible hospitals determined under subparagraph (A) shall be added together to determine an aggregate total of all projected per diem payment adjustments for 1993-94 payment adjustment year. This figure shall be identical to the aggregate figure for all hospitals used in the calculations regarding transfer amounts under subdivision (h) of Section 14163 for the 1993-94 state fiscal year.

(C) The figure determined for each eligible hospital under subparagraph (A) shall be divided by the aggregate figure determined under subparagraph (B), yielding a percentage figure for each hospital.

(D) The percentage figure determined for each hospital under subparagraph (C) shall be multiplied by the positive remainder calculated under subparagraph (C) of paragraph (2).

(E) The product as so determined for each eligible hospital under subparagraph (D) shall be the supplemental lump-sum payment adjustment amount payable to the particular hospital.

(4) The department shall make partial payments of the supplemental lump-sum payment adjustments to eligible hospitals on or before January 1, 1994. The department shall make final calculations regarding the supplemental lump-sum payments based on data available as of March 1, 1994, and shall distribute the final payments promptly thereafter.

(5) The department shall implement this subdivision only to the extent consistent with federal medicaid law and the Medi-Cal State Plan, and only to the extent that the department determines that federal financial participation is available. In doing so, the department shall comply with any procedures instituted by the Health Care Financing Administration in connection with Sections 447.297 (d) (3) and 447.298 of Title 42 of the Code of Federal Regulations.

Welf. & Inst. Code § 14123. Suspension of provider of service

14123. Participation in the Medi-Cal program by a provider of service is subject to suspension in order to protect the health of the recipients and the funds appropriated to carry out this chapter.

(a) The director may suspend a provider of service from further participation under the Medi-Cal program for violation of any provision of this chapter or Chapter 8 (commencing with Section 14200) or any rule or regulation promulgated by the director pursuant to those chapters. Any such suspension may be for an indefinite or specified period of time and with or without conditions or may be imposed with the operation of the suspension stayed or probation granted. The director shall suspend a provider of service for conviction of any felony or any misdemeanor involving fraud, abuse of the Medi-Cal program or any patient, or otherwise substantially related to the qualifications, functions, or duties of a provider of service.

If the provider of service is a clinic, group, corporation, or other association, conviction of any officer, director, or shareholder with a 10 percent or greater interest in that organization, of such a crime shall result in the suspension of that organization and the individual convicted if the director believes that suspension would be in the best interest of the Medi-Cal program. If the provider of services is a political subdivision of the state or other government agency, the conviction of the person in charge of the facility of such a crime may result in the suspension of that facility. The record of conviction or a certified copy thereof, certified by the clerk of the court or by the judge in whose court the conviction is had, shall be conclusive evidence of the fact that the conviction occurred. A plea or verdict of

guilty, or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

After conviction but before the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, the director, if he or she believes that suspension would be in the best interests of the Medi-Cal program, may order the suspension of a provider of service. When the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence irrespective of any subsequent order under Section 1203.4 of the Penal Code allowing a person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment, the director shall order the suspension of a provider of service. The suspension shall not take effect earlier than the date of the director's order. Suspension following a conviction is not subject to the proceedings required in subdivision (c). However, the director may grant an informal hearing at the request of the provider of service to determine in the director's sole discretion if the circumstances surrounding the conviction justify rescinding or otherwise modifying the suspension provided for in this subdivision.

If the provider of service appeals the conviction and the conviction is reversed, the provider may apply for reinstatement to the Medi-Cal program after the conviction is reversed. Notwithstanding Section 14126.6, the application for reinstatement shall not be subject to the one-year waiting period for the filing of a reinstatement petition pursuant to Section 11522 of the Government Code.

(b) Whenever the director receives written notification from the Secretary of the United States Department of Health and Human Services, that a physician or other individual practitioner has been suspended from participation in the Medicare or Medicaid programs, the director shall, promptly suspend the practitioner from participation in the Medi-Cal program. This automatic suspension is not subject to the proceedings required in subdivision (c). No payment from state or federal funds may be made for any item or service rendered by the practitioner during the period of suspension.

(c) The proceedings for suspension shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that hearings may be conducted by departmental hearing officers appointed by the director. The director may periodically subcontract with the Office of Administrative Hearings to conduct the hearings. The director may temporarily suspend any provider of service prior to any hearing when in his or her opinion that action is necessary to protect the public welfare or the interests of the Medi-Cal program. The director shall notify the provider of service of the temporary suspension and the effective date thereof and at the same time serve the provider with an accusation. The accusation and all proceedings thereafter shall be in accordance with the sections of the Government Code specified in this subdivision. Upon receipt of a notice of defense by the provider,

the director shall set the matter for hearing within 30 days after receipt of the notice. The temporary suspension shall remain in effect until such time as the hearing is completed and the director has made a final determination on the merits. The temporary suspension shall, however, be deemed vacated if the director fails to make a final determination on the merits within 60 days after the original hearing has been completed. This subdivision does not apply where the suspension of a provider is based upon the conviction of any crime involving fraud, abuse of the Medi-Cal program, or suspension from the federal Medicare program. In those instances, suspension shall be automatic.

(d) The suspension by the director of any provider of service shall preclude the provider from submitting claims for payment, either personally or through claims submitted by any clinic, group, corporation, or other association to the Medi-Cal program for any services or supplies the provider has provided under the program, except for services or supplies provided prior to the suspension. No clinic, group, corporation, or other association which is a provider of service shall submit claims for payment to the Medi-Cal program for any services or supplies provided by a person within the organization who has been suspended or revoked by the director, except for services or supplies provided prior to the suspension.

Where the provisions of this chapter or Chapter 8 (commencing with Section 14200) or the regulations promulgated by the director are violated by a provider of service which is a clinic, group, corporation, or other association, the director may suspend the organization and any individual person within the organization who is responsible for the violation.

(e) Notice of the suspension shall be sent by the director to the provider's state licensing, certifying, or registering authority, along with the evidence upon which the suspension was based.

Welf. & Inst. Code § 14123.2. Civil penalties for submission of improper claims

14123.2. Any provider or person that presents or causes to be presented a claim for services to an officer, employee, or agent of the State of California, or of any department or agency thereof as defined in appropriate state law , that the director determines is for a medical or other item or service that the person knows or has reason to know; (a) was not provided as claimed, or (b) payment for which may not be made under the program in the following instances: (1) when the person or provider has been suspended from participation in the program, or (2) when the department determines that the services or items claimed are substantially in excess of the needs of individuals or are of a quality that fails to meet professionally recognized standards of health care, or (3) when the department determines that a person has demonstrated a pattern of abusive overbilling of the program , or (4) when the department determines that a person has intentionally or negligently made a false statement or representation on any request for payment submitted to the Medi-Cal program ; or (c) is submitted in violation of an agreement between the person and the state, shall be subject in addition to any

other penalties that may be prescribed by law, to a civil money penalty of not more than three times the amount claimed for each item or service. For continuing intentional violations, a civil money penalty of not more than three times the amount claimed for each item or service may be imposed for each day the violation continues.

The director shall make the determination to assess civil money penalties and shall be responsible for the collection of the penalty amounts.

The provider or person subjected to a civil money penalty may appeal any decision by the director to assess the penalty.

Notwithstanding any other provisions of law, all money collected pursuant to this section shall be deposited in the General Fund on a monthly basis.

Welf. & Inst. Code § 14126.50. Appeal of result of department audit

14126.50. Facilities and previous licensees of facilities may appeal the result of any department audit pursuant to this article, as provided in regulations adopted by the department.

Welf. & Inst. Code § 14171. Administrative appeal; interest

14171. (a) The director shall establish administrative appeal processes to review grievances or complaints arising from the findings of an audit or examination made pursuant to Sections 10722 and 14170.

(b) Different administrative appeal processes may be established by the director for grievances or complaints arising from the determinations of a tentative or final settlement based on audit or examination findings made by or on behalf of the department pursuant to Sections 10722 and 14170, except that consistent with existing practice, no administrative appeal shall be available for tentative settlement of cost reports.

(c) The administrative appeal process established by the director for final settlements, including, in the case of hospitals, the application of Sections 51536, 51537, and 51539 of Title 22 of the California Code of Regulations shall include the procedural requirements of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The impartial hearing shall be conducted by an administrative law judge appointed by the director. The director may subcontract with the Office of Administrative Hearings to conduct hearings on cases involving complicated issues of fact or law, or to reduce the backlog of cases.

(d) The administrative appeal process established by the director for tentative settlements, including, in the case of hospitals, the application of Sections 51536, 51537, and 51539 of Title 22 of the California Code of Regulations shall be an informal process which, however, guarantees a provider the right to present any grievance or complaint to the department in writing. Any subsequent hearings shall be conducted in an informal manner and shall be held at the discretion of the department.

(e) The time limitations in subdivisions (f) and (g) for the impartial hearing and the final decisions are mandatory. If the department fails to conduct the hearing or to adopt a final decision thereon within the time limitations provided in subdivisions (f) and (g), the amount of any overpayment which is ultimately determined by the department to be due shall be reduced by 10 percent for each 30-day period, or portion thereof, that the hearing or the decision, or both, are delayed beyond the time limitations provided in subdivisions (f) and (g). However, the time period shall be extended by either of the following:

(1) Delay caused by a provider.

(2) Extensions of time granted a provider at its sole request or at the joint request of the provider and the department.

(f)(1) Notwithstanding subdivision (c), the administrative appeal process established by the director shall commence with an informal conference with the provider, a representative of the department, and the administrative law judge. The informal conference shall be conducted no later than 90 days after the filing of a timely and specific statement of disputed issues by the provider. The administrative law judge, when appropriate, may assign the administrative appeal to an informal level of review where efforts could be made to resolve facts and issues in dispute in a fair and equitable manner, subject to the requirements of state and federal law. The review conducted at this informal level shall be completed no later than 180 days after the filing of a timely and specific statement of disputed issues by the provider.

(2) Nothing in this subdivision shall prohibit the provider from presenting any unresolved grievances or complaints at an impartial hearing pursuant to subdivision (c). The impartial hearing shall be conducted no later than 300 days after the filing of a timely and specific statement of disputed issues by the provider. For noninstitutional providers, a proposed decision shall be prepared and transmitted to the director and the parties within 60 days after the closure of the record of the impartial hearing. For institutional providers, a proposed decision shall be prepared and transmitted to the director and the parties within 180 days after the closure of the record of the impartial hearing.

(3) Subject to subdivision (g), a final decision in a noninstitutional provider appeal shall be adopted within 180 days after the closure of the record of the impartial hearing, and a final decision in an institutional provider appeal shall be adopted within 300 days after the closure of the record of the impartial hearing.

(g) In the event the director intends to modify a proposed decision, on or before the 180th day following the closure of the record of the hearing for noninstitutional providers or the 300th day following the closure of the record of the hearing for institutional providers, the director shall provide written notice of his or her intention to the parties and shall afford the parties an opportunity to present oral and written argument. Following this notice, on or before the 240th day following the closure of the record of the hearing for noninstitutional providers or the 420th day following closure of the record of the hearing for

institutional providers, or within that additional time period as is granted pursuant to the sole request of a provider or at the joint request of the provider and the department, the director shall issue a modified decision.

(h) In the event recovery of a disallowed payment has been made by the department, a provider who prevails in an appeal of a disallowed payment shall be entitled to interest at the rate equal to the monthly average received on investments in the Surplus Money Investment Fund, commencing on the date the appeal is formally accepted by the department or the date payment is received by the department, whichever is later.

(i) Except as provided in subdivision (j), commencing 60 days after issuance of the first statement of account status or demand for repayment resulting from an audit or examination made pursuant to Sections 10722 and 14170, interest at the rate equal to the monthly average received on investments in the Surplus Money Investment Fund during the month the first statement of account status or demand for repayment was issued shall be assessed against any unrecovered overpayment due to the department.

(j)(1) Commencing on the day following the last day of the period covered by an audit or examination made pursuant to Sections 10722 and 14170, interest at the rate established under Section 19269 of the Revenue and Taxation Code which is in effect on the date of the commencement of that interest shall be assessed against any unrecovered overpayment due to the department by providers of durable medical equipment or incontinence supplies.

(2) Interest which accrues under this subdivision for recoupment of an overpayment based on the lack of medical necessity for a previously approved claim shall commence to accrue on the date of written demand by the department.

(k) The final decision of the director shall be reviewable in accordance with Section 1094.5 of the Code of Civil Procedure within six months of the issuance of the director's final decision.

Welf. & Inst. Code § 14300. Notice of intent to contract; request for hearing

14300. The department shall publish a notice of intent to contract at least 60 days prior to the effective date of any initial or renewed contract. The notice shall appear in local newspapers circulated in the service areas of the prepaid health plan. The notice shall announce the department's intent to contract and any person affected by the contract shall have the opportunity to request that a public hearing be held. The request for public hearing shall be accompanied by an explanation of the reason for the request and a description of problems or questions regarding the plan's ability to meet its contractual obligations. A hearing shall be held by the department if the director determines that the request is reasonable and warrants a full public hearing. A request shall be considered reasonable if there is a question regarding the plan's ability to meet its contractual obligations.

No contract shall be signed by the department until the department determines that the plan has the ability to fully comply with its contractual obligations.

Welf. & Inst. Code § 14450. Standards for approval or renewal of contract

14450. (a) No contract between the department and a prepaid health plan shall be approved or renewed unless the providers and the facilities of the prepaid health plan meet the Medi-Cal program standards for participation as established by the director. In addition, a prepaid health plan shall meet the standards required pursuant to the provisions of the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) , or the provisions of Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, as appropriate, standards specifically required by federal law, and the following requirements:

(1) Each prepaid health plan shall establish a grievance procedure under which enrollees may submit their grievances. The procedure shall be approved by the department prior to the approval of the contract. The department shall establish standards for the procedures to insure adequate consideration and rectification of enrollee grievances. A prepaid health plan shall make a finding of fact in the case of each grievance processed, a copy of which shall be transmitted to the enrollee. If the enrollee has an unresolved grievance, the fair hearing provided in Chapter 7 (commencing with Section 10950) of Part 2 shall be available to resolve all grievances regarding care and administration by the prepaid health plan. The findings and recommendations of the department, based on the decision of the hearing officer, shall be binding upon the prepaid health plan. Any changes in a proposed health plan's grievance procedure must be approved by the department before the changes take effect.

(2)(A) Medi-Cal enrollees shall have the same responsibilities and shall be entitled to the same rights as other enrollees with regard to any requirements for arbitration as a condition of membership in a health plan.

(B) Arbitration requirements shall be clearly disclosed in all of the contractor's Medi-Cal marketing presentations, materials and brochures, enrollment agreements, evidence of coverage, and disclosure forms.

(3) The prepaid health plan shall provide the director, for his or her approval, a plan for marketing its services to Medi-Cal beneficiaries which relates the proposed service to the need for services, and the size of the potential population to be served in the proposed service area.

(4) The prepaid health plan shall demonstrate to the department that it has adequate financial resources, administrative abilities and soundness of program design to carry out its contractual obligations.

(b) The requirements of this section shall apply to all managed care plan contracts entered into under any of the following:

(1) The act that added this subdivision.

(2) Any of the following provisions of Chapter 7 (commencing with Section 14000).

(A) Article 2.7 (commencing with Section 14087.3).

(B) Article 2.9 (commencing with Section 14088).

(C) Article 2.91 (commencing with Section 14490).
(3) Article 7 of Chapter 8 (commencing with Section 14490).